



Continental Compliance Report 2014

Realizing Africa's Aspirations

The Status of Compliance to African
Union Instruments

About State of the Union

The State of the Union Coalition (SOTU) is a coalition of civil society organizations working together to hold African Governments accountable for the ratification and implementation of African Union (AU) decisions. Since its creation in 2009, SOTU has been monitoring the implementation of 14 AU legal instruments and policy standards by publishing reports and doing advocacy work on the status of implementation in 10 countries across the five regions of the continent and at the continental level. SOTU is committed to the establishment of a democratic culture, effective public institutions and meaningful citizens' participation in public affairs to demand the delivery of key political, social, and economic rights and standards that directly impact on the lives of African citizens.

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List of Acronyms & Abbreviations

ACBF	African Capacity Building Foundation
ACDEG	African Charter on Democracy, Elections and Governance
AfDB	African Development Bank
ANC	African National Congress
APRM	Africa Peer Review Mechanism
ASDS	Agriculture Sector Development Strategy
AU	African Union
AUC	African Union Commission
AYC	African Youth Charter
CAADP	Comprehensive Africa Agriculture Development Programme
CEDAW	Convention on the Elimination of all forms of Discrimination against Women
CGT	Coalition Governing Team
CPI	Corruption Perception Index
CSO	Civil Society Organisation
DfID	Department for International Development (UK)
EOCO	Economic and Organised Crimes Office
FAO	Food and Agriculture Organisation
FCUBE	Free, Compulsory Universal and Basic Education
FGM	Female Genital Mutilation
FIC	Financial Intelligence Centre
HIV/Aids	Human Immuno-deficiency Virus/ Acquired Immune Deficiency Syndrome
IFPRI	International Food Policy Research Institute
MDG	Millennium Development Goals
METASIP	Medium Term Agriculture Sector Investment
MGDS	Malawi Growth and Development Strategy
MNC	Multi-National Corporation
MTIP	Medium Term Investment Plan
NDC	National Democratic Convention
NEPAD	New Partnership for African Development
NGM	National Gender Machinery
NGO	Non-Governmental Organisation
NPPA	National Public Prosecution Authority
OAG	Office of the Auditor General
OAU	Organisation of African Unity
OECD	Organisation for Economic Cooperation and Development
PMTCT	Prevention of Mother-to-Child Transmission
PREPA	Programme for the Preparation of Youth for Work
RDB	Rwanda Development Board
REC	Regional Economic Communities
RPPA	Rwanda Public Procurement Authority
RRA	Rwanda Revenue Authority
RRG	Research Reference Group
SADC	Southern Africa Development Cooperation
SIDA	Swedish International Development Agency
SIGFIP	Integrated Public Financial Management System
SOTU	State of the Union
SSA	Sub-Saharan Africa
TI	Transparency International
UNDP	United Nations Development Programme

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SOTU	State of the Union
SSA	Sub-Saharan Africa
TI	Transparency International
UNDP	United Nations Development Programme
UNECA	United Nations Economic Commission for Africa
UNOY	United Network of Young Peacebuilders
USAID	United States Agency for International Development
VET	Technical and Vocational Education and Training

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This report belongs to the people of Africa who should consume it, assess it, and use it to pursue their cause relentlessly.

Yves Niyiragira



Chairperson, Coalition Governance Team

Executive Summary

The aspirations of the African continent's citizens have over the years been aptly described in the African Union's (AU) legal instruments, policy frameworks, and standards. The formation of the Organisation of African Union (OAU) on the May 25, 1963 and its transition to the AU in 1999 as the continental bodies charged with formulating international policy prepared the ground for translating these instruments and frameworks into reality. The fiftieth anniversary of the AU in 2013 provided a fitting opportunity to showcase its progress in impacting the lives of the citizens of Africa. The AU has steadily showed its commitment to improving the lives of Africans, at least at the policy formulation level, evident in the 49 legal instruments and policy frameworks¹.

In SOTU, we believe that popularising, implementing, and domesticating these instruments successfully at the national level will have a tremendous positive impact on the lives of nearly 1 billion citizens of the African continent. The SOTU Continental Compliance Report (2014) re-examines the imperative of compliance to AU instruments by member states at the national level: looking at the progress made by member states, and the implications of existing challenges and successes on realising the aspirations set out in those instruments.

This report comprises eight chapters that discuss the status of compliance to 10 legal instruments and four policy frameworks in 10 case study countries. An introduction to the SOTU provides the contextual background, rationale for case studies, and research methodology, status of compliance to AU instruments, and experience from 2010 report; democratic governance, transparency and human rights; rights of women; the rights and welfare of the child and the youth; agriculture and conservation of nature; health; and conclusions and recommendations.

The report's main conclusion is that efforts to establish mechanisms for implementing AU instruments have been robust. However the actual implementation has not been as robust and more efforts are needed. AU and its member states still remain committed to expressing their aspirations for improved socio-economic and political development by formulating instruments. This is an expression of their belief in the potential role that these decisions have in transforming the continent to better the citizens' lives.

In 2014 alone, the AU adopted six new legal instruments addressing various policy issues, ranging from the decentralisation of government and cross-border cooperation, to cyberspace security. These are positive steps towards improving lives and eradicating poverty. But translating these steps into concrete results requires full compliance with the instruments' provisions: Member states need to ratify, implement, and domesticate these decisions at the national level.

A compliance snapshot of most countries, for instance, shows that apart from AU's foundational instruments like the Treaty Establishing the African Economic Community - which has attracted 49 ratifications (91%) - those relating to good governance, transparency, environment and natural resources, gender justice, and human rights have been signed by most states but ratified by only a few, and at a slow rate. The challenge going forward is, therefore, not so much the formulation of .

¹ Henceforth 'Instruments'

new policies but rather the implementation of those already formulated. This will require political resolve and heightened institutional capacities. The policy arguments and main messages of this report are summarized below

Democratic governance, transparency and human rights

Most AU member states where this research was conducted are on track with regard to implementation of instruments that touch on democratic governance, transparency, and human rights. These countries have passed laws and established institutions aimed at strengthening democracy, human rights and anti-corruption efforts. They have invested resources in supporting these institutions to operate, reduce levels of corruption and make progress in the delivery of services and in political, economic and social governance. Political participation in these countries has increased as more institutions are enabling citizens to engage public institutions. The number of civil society organisations has also increased and media freedom is legislated.

Although this account speaks to positive progress, the challenges are equally immense. For instance, in spite of the many laws enacted and institutions established to address corruption between 2012 and 2014, the vice has gone up in Kenya and Nigeria. Neither Kenya nor Nigeria has registered an anti-corruption perception index beyond 30 per cent since 2010, an indication of poor performance and low gains in preventing and/or combating corruption. In Malawi, the anti-corruption perception index has peaked between 2013 and 2014, while in Rwanda and Tunisia, where corruption has been low, there have been slight increases in anti-corruption perception indices. Ghana, Mozambique and South Africa have registered slight declines in corruption while Senegal has experienced a significant decrease in the vice. Corruption not only presents a stumbling block to political, economic and other reforms but also undermines the effective implementation of all instruments, especially those related to elections, human rights, natural resources, youth, peace and security. Increased control over the activities of civil society organisations has undermined their sustainability, as have attacks on journalists and the media. The effectiveness of political, legal, and economic reforms has been hampered by lack of local ownership. Reform programmes are largely donor-dependent, thus limiting the capacity to monitor them and innovate. Weaknesses in the existing reform frameworks as well as low commitment of civil servants and political leaders to policy reform initiatives compound these limitations.

Rights of women

There is considerable progress in establishing institutions and passing laws to protect women's rights, ban harmful practices, outlaw the abuse of females and prohibit their alienation. Most countries have passed laws and adopted constitutions that guarantee the participation of women in leadership and management positions.

However, the culture of patriarchy continues to negatively impact on gender relations in the areas of power, production, distribution and governance, while harmful practices against women like Female Genital Mutilation (FGM) continue in most countries - without the necessary intervention. Weaknesses in the application of the national constitution and the Penal Code, stemming from inconsistencies, also create permissive legal environments that perpetuate the violation of women and children's rights. This impedes successful implementation of related instruments - especially the Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women.

In terms of women participation, only Rwanda has exceeded the target of 30 per cent female membership in its parliament. Women constitute 56 per cent of the Members of Parliament in Rwanda. Still, the number of women in regional and district administration, .

the judiciary, and other public institutions is still very low in all the countries - including Rwanda

Rights and welfare of the child and the youth

The African Charter on the Rights and Welfare of the Child is one of the instruments with the highest number of ratifications at 47, representing 87 per cent of the AU member states. All the case study countries have ratified the Charter. They have set up institutions such as ministries, juvenile courts, and committees on the rights and welfare of the child. Most countries are also implementing the Charter's provisions on the right to education for children by providing free books, transport and uniforms.

There has been an increase in enrolment of female students, and provision of free basic education in many countries. Governments are allocating funds for children's immunisation programmes, with allocation being highest in Senegal and South Africa (100%), lowest in Mozambique (24%), and between 45 per cent and 70 per cent in the other countries. Most countries have also formulated national youth policies to enable young people to take part in the formulation and evaluation of economic and social development policies, create jobs for themselves; enable rural dwellers to acquire production capacity and assets to make it possible for them to produce and participate in local, national and international markets as well as to work with the private sector to enable it to create more jobs.

While these achievements are commendable, most countries still confront a number of challenges in ensuring the welfare of the African child. Mortality rates for children under five, for instance, have remained above 100 out of 1,000 births in Mozambique and Nigeria; between 70 and 95 in Malawi and Rwanda; and between 50 and 90 in Ghana, Kenya, Senegal and South Africa.

In the case study countries, the percentage of children under five suffering from malnutrition has remained higher in Ghana (87%), lowest in South Africa (23%) and between 30 per cent and 45 per cent in the remaining countries - except Tunisia on which data was not available. The right to basic education has also not been equally enjoyed by children in rural areas. The quality of education has declined and the number of school dropouts has increased as facilities - such as libraries, number of desks, toilets and housing for teachers - remain a challenge even in some of the middle income countries.

Youth unemployment remains a major challenge. This is compounded by limited access to adequate financial resources to enable youth to start dynamic businesses, lack of appropriate skills required in the labour market, lack of entrepreneurial culture for most youth, lack of mechanisms for entry and re-entry into the labour market, and limited access to information on national and foreign labour markets.

Agriculture and conservation of nature

Agriculture supports the livelihoods of 80 per cent of Africa's population. This means that the Comprehensive Africa Agriculture Development Programme (CAADP), a policy framework that aims to help African countries to reach higher economic growth status through agriculture-led development, remains one of the most well-thought-out strategies for eliminating poverty. Allocating of 10 per cent of public money to agriculture efficiently will, therefore, translate to increased food supply and reduced hunger. Yet, only 28 AU member states (52%) have at least developed (ratified) formal national agriculture and food security investment plans, while only 13 countries - Burundi, Burkina Faso, the Democratic Republic of Congo, Ethiopia, Ghana, Guinea, Madagascar, Malawi, Mali, Niger, Senegal, Zambia, and Zimbabwe - have met or surpassed the 10 per cent target in one or more years since 2003.

Efforts towards self-sufficiency and security in food are also bearing fruit in some countries. Governments are also putting in place considerable measures to conserve the environment, including the establishment of environmental protection agencies, environmental research institutes, remote sensing centres, disaster preparedness programmes, and extension services to farmers.

The implementation of CAADP has, however, been slow, its targets difficult to meet, and public-private partnerships needed to maximise benefits from agriculture not firmly established. Efforts towards ensuring food security have also been constrained by increased demand for food triggered by high population growth rates, re-current conflicts, and emphasis on food exports which increase prices and aggravate local shortages. On the conservation of nature, land transfers and privatisation of land in the recent past undermines conservation initiatives. Governments' leasing large tracts of land to mining and logging companies without restrictions also creates a permissive environment for destructive land use methods.

Health

The recent Ebola catastrophe will certainly cause a paradigm shift in the institution and management of Africa's health affairs. The AU has, however, in the past strengthened its focus on tuberculosis and HIV/Aids on the one hand and malaria on the other. Some member states have registered positive progress in health spending. Among the case study countries, for instance, the percentage of government health expenditure as part of the total budget slightly increased in Cameroon, Ghana, Nigeria, Senegal and South Africa, and trebled in Rwanda.

Some countries' health expenditures have however reduced - others tremendously - for example in Kenya, where government health expenditure has declined by half since 2011. A look at the impact of such expenditures also reveals some negative trends. The percentage of women living with HIV/Aids has remained above 40 per cent in all the case study countries, with the lowest being Nigeria (47%) and the highest in Kenya and Rwanda at 63 per cent.

Recommendations

Full compliance with AU instruments will have a tremendous positive impact on African citizens if member states move beyond ratification. Implementation reflects a country's commitment to actualise the provisions enshrined in the instruments. In order to realise meaningful implementation, policy makers should consider the following recommendations.

- AU and AU member states need to ensure policy coordination among their organs. At the country level, especially, there is **need for improved coordination between state agencies and government arms** that connect instruments' aspirations to their intended results. Such efforts will include the establishment of mechanisms for tracking, monitoring and reporting progress and accountability for actions and results. This will help in identifying gaps that require policy and infrastructural attention while also making implementation a goal-oriented and time-consistent process.
- Establishing quality institutional frameworks at the national level for realising the policy objectives of AU instruments is important. But this is not sufficient: **Institutions need to be empowered** (to have the capacity) **to design, formulate, and implement policies** that fulfil these objectives. This empowerment should include the ability to sanction or prosecute actions that contravene set policy courses. Governments should also complement the existing institutions with strong laws that are elaborate, stable, and backed by the national constitutions, rather than those that permit narrow interpretations and collusion. Stronger anti-corruption laws and institutions, for instance, have yielded lower the levels of corruption.
- Governments should incorporate AU instruments' obligations into their constitutions, backed by - and not contrary to or separate from - independent national legislation. **National law should be seamlessly applied in relation to already ratified AU instruments.** A country's extradition laws should, for instance, allow extradition for offences of universal jurisdiction under international treaties and conventions (e.g. AU Convention on the Fight Against Corruption) ratified by that country.
- Countries need to **develop supreme universal laws that ensure consistency in the application of both national constitutions and the Penal Code.** Persons charged with offences under the Penal Code should not be acquitted under the provisions of the Constitution. Currently, the Cameroonian Constitution, for instance, affirms the right of women to dignified treatment and protection of their integrity. However, there is no provision in the Penal Code providing for protection against sexual harassment. Malawi's Penal Code makes it an offence to have carnal knowledge with a woman below the age of 16 years, yet the Constitution allows marriage of girls aged 15 years if the parents give their consent. Such a permissive legal environment creates exit routes for offenders and perpetuates violation of women and children's rights, hence impeding implementation of related instruments - especially the Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women.
- To better realise agriculture-led development, policy makers should first view instruments like **CAADP as policy frameworks for guiding their actions and interventions, and not schemes for attracting donor funds.** Policies for investing in agricultural development should be designed to facilitate long-term investments in food security and agriculture-led development rather than to attract foreign funding as is currently the case in most AU member states. Governments should also consider investing in water management and irrigation infrastructure to facilitate a stable and predictable water supply system as well as affordable and reliable renewable energy for agricultural production. This could be achieved by approaching the African Development Bank (AfDB), or turning to internal resources for technical and financial assistance. Institute national irrigation flagship projects will be a good starting point.

- **AU member states should harness innovation, which has the potential to increase skill formation, enhance productivity, and create youth employment opportunities.** They should also build institutional quality so that individuals and organisations are effective in responding to the needs of the youth.
- AU member states must not neglect their responsibility to finance healthcare. **Governments should scrap or substantially minimise user fees to facilitate access to affordable healthcare services. They should also combine direct expenditure with other healthcare financing models** by either funding healthcare administration, leaving specific projects relating to the control of epidemic diseases to external donors, or financing health by paying into health insurance schemes, instead of paying directly for medical services.
- **The African Union and its member states should invest in popularising AU instruments** among the African citizenry. This should be a multi-stakeholder task shared between the government, private sector, and the civil society (including the media). The institutional framework for implementation should have a civic education component that educates the public on the content and benefits of complying with the signed instruments. A best practice case is Kenya's Anti-Corruption Police Unit - a body which investigates and prosecutes corruption cases: The unit's Department of Research, Information and Public Education carries out research and awareness programmes on corruption (ACBF, 2007), hence facilitating implementation of the AU Convention on Preventing and Combating Corruption.

Introduction

Background

The African Union was established after two thirds of Africa's governments signed the Constitutive Act of the AU in July 2001. Formally launched in Durban, South Africa, in July 2002, the AU replaced the Organisation of African Unity (OAU). The Constitutive Act commits African governments to further the values of African integration, democratic governance, human rights and the participation of its citizens in the African Union. Indeed, it asserts that the AU will be a union not just of governments, but peoples as well.

Since the Act, African governments have developed and acceded to 49 instruments in the form of protocols, conventions, treaties and declarations. These instruments were developed to accelerate the integration of African government policies and programmes at the national level. Collectively, these instruments hold African states to higher standards of performance. They range from governance, political, social and economic rights, to peace and security, as well as development. Should 14 of these instruments - 10 legal instruments and four policy standards - fully implemented, they have tremendous promise for the lives of millions in Africa.

The 10 legal instruments are:

- The African Youth Charter
- Treaty Establishing the African Economic Community
- African Charter on the Rights and Welfare of the Child
- African Charter on Human and People's Rights in Africa
- African Charter on Democracy, Elections and Governance
- African Union Convention on Preventing and Combating Corruption
- African Convention on the Conservation of Nature and Natural Resources
- Revised African Convention on the Conservation of Nature and Natural Resources
- Protocol to the African Charter on Human and People's Rights on the Rights of Women in Africa
- Protocol to the Treaty Establishing the African Economic Community relating to the Pan-African Parliament

The four policy frameworks are:

- The African Health Strategy 2007-2015
- NEPAD Comprehensive Africa Agricultural Development Plan (CAADP)
- Abuja Call for Accelerated Action towards Universal Access to HIV/Aids, Tuberculosis and Malaria Services by 2010
- Maputo Plan of Action for the Operationalisation of the Continental Policy Framework for Sexual and Reproductive Health and Rights 2007-2010

Combined, these instruments significantly raise the bar for most African governments in the areas of political, social and economic rights.

The purpose

Failure to effectively implement international or continental laws and policies directly impacts human development and negatively affects national economic indicators. These failures emanate from poor governance in Africa as well as weak capabilities of African citizens and civil society organisations to hold their governments accountable for the decisions they take in multi-lateral spaces, particularly the AU.

The State of the Union (SOTU) Coalition, a unique multi-sectoral monitoring group, was formed in 2009 by 10 organisations in 10 countries - including Oxfam - with the aim of holding African governments accountable for the ratification and implementation of AU decisions. A key factor informing their policy advocacy is the slow speed at which AU decisions and declarations were being integrated into national policies, laws and budgets. As a result, concerted public pressure and muscular political will are needed at both continental and national levels to increase the visible effect of the AU in the lives of ordinary citizens.

SOTU contributes to this policy gap by tracking the performance of African governments. This is in line with Article 4.1(b) of the Rules of Procedure of the Assembly of Heads of States, which requires the Assembly “to monitor the implementation of policies and decisions of the Union as well as ensure compliance by all Member States”. SOTU urges compliance to these instruments in recognition of the tremendous opportunities they offer for eradicating poverty, promoting justice and realising political, economic and social rights in Africa. The overall aim of monitoring is:

1. To assess and determine the level of compliance by AU member states on key commitments;
2. To determine the effectiveness of mechanisms on implementation at the AU and country levels;
3. To recommend specific measures to promote and encourage compliance and implementation.

The impact

SOTU seeks to catalyse active citizenship, effective national governance and the realisation of the fundamental freedoms and human rights contained in various key AU policy standards and legal instruments. The coalition engages citizens to track the performance of governments and the AU on against key democratic governance, economic, social rights, civil and political rights policy standards and instruments.

The AU Commission, Permanent Representatives Committee and relevant arms of national governments are challenged to develop appropriate tools for tracking implementation and action plans for the realisation of AU instruments in the areas of democratic governance, economic and social rights and civil and political rights.

In this way, SOTU creates space for national governments, civil society organisations, other development stakeholders, and the AU to dialogue on issues hindering the implementation of these decisions. It is expected that this would lead to an increased volume and diversity of empowered community and citizens voices in the affairs of the African Union.

Since 2010, part of SOTU’s advocacy strategy has been to conduct rigorous country level research to audit progress on compliance and implementation of selected instruments and policy frameworks in the 10 countries. The various country researches

feed into a continental research report used to engage the AU, member states, and other stakeholders. The first continental report was published in 2010. In 2013, SOTU initiated a second round of compliance research in nine (9) countries (updating information on the tenth country of study) which resulted into this second edition of the SOTU Continental Compliance Report series.

Rationale for countries' selection

The 10 countries were selected on the basis of:

- Regional representation.
- Accession to the Africa Peer Review Mechanism (APRM), considered a good context to weight performance on key governance benchmarks.
- Rights and accountability thresholds.
- Linguistic representation.
- Experience with compliance with other international treaties and protocols.
- Post-conflict experience.

SOTU Continental Report series: A snapshot

The 2010 Report

The 2010 Report was the first compliance audit released under this series. Its overall conclusions on compliance with AU instruments were that legal sector reforms had opened up space for increased voice and citizen participation but laws discriminating against minorities and weak social groups persisted, and extra-judicial killings, disappearances as well as arbitrary arrests were common. Public investments in agriculture and natural resources were still low, with only Nigeria, Rwanda, and Senegal having reached 6 per cent out of the 10 per cent commitment made in CAADP by the end of 2010.

On health policies, only Rwanda had met the 15 per cent health financing target, while Ghana and Nigeria spent only 5 per cent of their budgets on health. The implementation of policies on the rights of women was not robust as women still controlled only 1 per cent of land in Africa. About 40 per cent of women were found to have no basic education while gender-based discrimination and violence were on the rise. Some countries had entrenched the rights of women in their constitutions and enacted various laws, which were, however, 'patchy' and therefore inadequate. Public awareness on these rights was low and increases in women participation and representation were marginal.

On the rights of the child, the 2010 Report noted that child mortality, gender disparity and child labour were declining. However, child marriages and sexual harassment were still a problem in some countries. Children with disabilities were not receiving adequate support. In spite of the enacted laws discrimination between girls and boys still persisted. Although laws and charters on the rights of the youth had been passed, youth exploitation in the labour market through low wages was still a problem. Youth participation in public affairs was minimal and their awareness on safe sex and reproductive health was not evident.

The 2014 Report

Research for the 2014 Report built on the findings of the 2010 Report and assessed the extent to which compliance has changed on the issues covered by the identified instruments and policies in the 10 countries, in particular, and the entire continent, generally. The 2014 Report assessed the level of implementation of instruments and policies on democratic governance, economic and social rights, civil and political rights by the AU and its member states through the spectrum of 10 countries selected by the Coalition.

The overall aim of the report is to create awareness among policy makers on the urgent need to commit to the implementation of these policies and AU instruments. It also seeks to promote accountability as part of good governance in Africa. The report conceives implementation indicators as those specific systems that have to be established to enable signatories to perform their obligations under the instrument or policy framework. The indicators contain deliverables expected to arise out of the performance of these obligations by AU members.

Implementation indicators focused on ‘what’ factors and include:

- Laws, regulations and policies aimed at domestication;
- Institutions for enforcing these laws, regulations, policies, systems of governance, performance standards;
- Systems for the operational effectiveness of these institutions by providing funds, personnel, infrastructure and operational capacity;
- Programmes for implementation, socialisation, popularisation and awareness creation;
- Mechanisms for evaluating performance, improvement and innovation on policies.

Performance indicators focused on ‘how’ factors mainly those related to the level of delivery on these obligations and commitments, which include, for example:

- Legislation: the ‘how’ factors related to enforcement, access to redress organs; proportion of human resources and number of redress bodies to the needs at country level;
- Institutions: number and spread of institutions and their proportion to national needs; percentage of national budgets allocated to them; amount of resources allocated to infrastructure, human resources, capacity building and other support;
- Systems and programmes for community, CSO and media participation; awareness creation and accountability.

Research Methodology

This report series is the first concerted civil society effort towards a review and audit of continental performance against 14 legal instruments and policy frameworks of the African Union. The study was undertaken over a six-month period between September 2014 and June 2015. Between March 2012 and May 2013, some 10 country researchers reviewed official and unofficial secondary documents and interviewed keystakeholders for the 10 selected countries. In each country, a draft report was subjected to a validation workshop and critique from those that participated in the research. The country reports were revised to incorporate comments from the validation workshops. In all 10 countries, a host organisation provided guidance, research supervision and institutional support. These host organisations launched the country reports. Between October and February, this continental report was written, drawing from findings of the 2012, 2013 and 2014 national compliance reports by the SOTU member countries, as well as from reports by United Nations agencies and other international and regional multi-lateral institutions, including the African Union. While a historical approach has been used, this report broadly reviews the performance of Africa between 2011 and 2014.

The research question that has been answered in this report is, **‘What is the implementation and performance level of members of the African Union in implementing selected instruments and policies?’**

This study adopted a mixed methods research methodology, combining quantitative and qualitative research designs concurrently for triangulation of findings. The research design for this study was systematic analysis (Meta-analysis of secondary data). The quantitative methodology, also referred to as scientific method or science method, is based on the rationalistic emphasis philosophy. This approach determined philosophy in which causes probably determined effects or outcomes. The qualitative approach helped describe and explain, rather than predict phenomenon. The approach enabled the team to gain a deeper understanding through discovering meaning that may be difficult to convey quantitatively. Qualitative techniques explain the “how” and “why” questions that support the discovery of new information.

Qualitative and quantitative methodologies reinforce each other through their contemporary interpretive and explanatory strengths. The qualitative and quantitative research paradigms also complement each other. The triangulation of findings helped to neutralise bias, seek convergence of results and bring out contradictions and fresh perspectives.

Data was analysed both qualitatively and quantitatively. Information is reported in terms of frequencies and percentages and visualised through tables or figures. For example, to calculate the percentage of laws, policies and instruments that indicate the level of compliance, we counted the number of policies that had been ratified or implemented per country using a tally system. This was done for all the 10 countries and a total number of policies that have been implemented obtained. We then computed this into percentages.

Thus x = no. of policies that have been implemented depending on the indicators that we had identified. M = sum total of the policies implemented according to the indicators identified per Charter. This was computed as follows:

$$X/M * 100\%$$

The same methodology was used for all chapters. Therefore the methodology used is not separately presented in each chapter. Factors influencing compliance of AU member states

were teased out using the selected instruments and recommendations made accordingly. However the implementation and performance indicators differ from instrument to instrument. The research also revealed that there is no reliable data on budgetary allocation, amount of resources allocated to infrastructure, human resources, capacity building and other support to the implementation of the AU protocols and instruments. Such information can be obtained through in-depth field work resources, which were not readily available during the research process.

While the standards and instruments have been analysed in separate chapters, there is interconnectedness between health rights and food security, freedom from discrimination and exclusion on the basis of class, gender and age, and democracy and human rights. It is this interconnectedness that is being currently denied to millions of African people.

Where the report cites non-ratification, this does not imply that national laws, policies and processes are not in compliance with the AU standard being assessed. Indeed, in some cases, it was found that some national policies and processes were compliant and even surpassed the continental standard.

While all efforts have been made to ensure the accuracy of the findings, a report of this nature is likely to include omissions, errors or differences of perceptions from those held by the stakeholders it addresses. If the report generates debate and the sharing of new information, it will have served its purpose.

From these findings, it will be possible to make some broader generalizable findings and recommendations for African Union organs and member states during AU Summits. It is hoped that it will stimulate dialogue and discussion as well as accelerate concerted efforts towards monitoring and raising awareness both within governments, the African Union and the wider general public.

Chapter 1:

Current Status of Compliance with AU Legal Instruments & Policy Frameworks



Human rights protocols, covenants and laws are powerless to change the lives of the majority of African women in the absence of organised and public demand for their implementation - Solidarity for African Women's Rights Coalition, Cairo, 2008

The African Union has experienced over 50 years of international policy formulation, generating about 49 treaties, conventions, and protocols aimed at transforming the lives of Africa's citizens if fully implemented. The results, according to the 2014 Report, are converse. The record of ratification of major AU instruments has been poor. Apart from the foundational instruments such as the Treaty Establishing the African Economic Community, and The Protocol to that Treaty and the Constitutive Act of the African Union, which have been ratified by 96 per cent of AU member states, instruments relating to good governance, transparency and human rights were signed by the majority (over 80%) of the member states but ratified by very few.

The African Charter on Democracy, Elections and Governance, signed by 46 member states, has only been ratified by 23 members (150% of those that signed and all the 43% of all 54 members). The Protocol of the African Charter on Human and Peoples Rights on The Establishment of an African Court of Human and Peoples' Rights, signed by 52 (or 90%) of AU members has been ratified by only 27 or 50 per cent of all member states. The Protocol of the African Court of Justice that replaced this Protocol has attracted a paltry 16 ratifications or 29.6 per cent, while The African Charter on Values of Public Service and Administration has been ratified by only seven or 13 per cent of all member states. In critical areas such as infrastructure and energy, the ratification record has also been less than encouraging. The African Civil Aviation Commission Constitution (AFCAC), signed by 45 or

88.3 per cent of the AU Members and its successor, the Revised Constitution of the African Civil Aviation Commission, signed by only 34 or 63 per cent of the members have been ratified by 44 (81%) and 3 (5.5%) member states, respectively. Similar trends are noted in the ratification of instruments related to natural resources and the environment.

In spite of Africa's dependency on natural resources it is worrisome that while the first African Convention on the Conservation of Nature and Natural Resources has attracted 31 ratifications (57%), the Revised African Convention on the Conservation of Nature and Natural Resources has been ratified by only 12 (22%) member states. The Agreement on the Establishment of the African Risk Capacity (ARC) Agency, an instrument that seeks to address issues of crop insurance, disaster risk reduction and social protection, has been signed by only 24 (54.44%) of the member states but has so far not attracted a single ratification. The Convention for the Establishment of the African Centre for Fertiliser Development, and the Banjul Convention on Hazardous Wastes have been ratified by 6 (11%), 25 (46%) of all member states, respectively.

Table 1 shows the performance of the 54 member states with regard to ratification of all the 49 treaties, conventions, and protocols.

Table 2 shows an analysis of the most and least ratified instruments.

Table 3 shows performance in the ratification of the 10 legal instruments that the study for the SOTU 2014 Report focused on in 10 case study countries.

Figure 1 shows the rate of ratification of the selected 10 legal instruments across the 10 case study countries.

Figure 2 shows the spread of laws, policies, and institutions established to implement the instruments in the 10 case study countries.

Table 1: Status of Ratification of AU Charters, Treaties, Protocols, and Conventions as at January 2015²

Total	37	10	31	44	45	13	6	34	31	8	53	26	6	46	24	49	13
Zimbabwe	N	N	N	N	N	N	N	N	N	N	R	R	N	R	N	R	N
Zambia	N	N	N	R	R	R	N	R	R	N	R	R	N	R	N	R	N
Uganda	R	N	N	R	R	R	N	R	R	N	R	R	N	R	R	R	N
Tunisia	R	N	N	R	R	R	N	R	R	N	R	R	N	R	R	R	N
Togo	N	N	R	R	R	R	N	R	R	N	R	R	N	R	R	R	N
Tanzania	R	N	N	R	R	R	N	R	R	N	R	R	N	R	R	R	N
Swaziland	R	N	N	R	R	R	N	N	N	N	R	R	N	R	N	R	N
South Sudan	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N
Sudan	R	N	N	R	R	R	N	R	R	N	R	R	N	R	R	R	N
Sao Tome	N	N	N	N	N	N	N	N	N	N	R	R	N	N	N	R	N
Somalia	R	N	N	N	R	N	N	R	N	N	R	R	N	N	N	N	N
Sierra Leone	R	N	N	N	R	R	N	N	N	N	R	R	N	R	N	R	N
Seychelles	N	N	N	R	N	R	N	R	R	N	R	R	N	R	N	R	N
Senegal	R	N	N	R	R	R	N	R	R	N	R	R	N	R	R	R	N
Sahrawi	N	N	N	N	N	N	N	N	N	N	R	R	N	N	N	R	N
South Africa	N	N	N	N	R	R	N	N	N	N	R	R	N	R	N	R	N
Rwanda	R	R	R	R	R	R	N	R	R	N	R	R	N	R	N	R	R
Niger	R	R	R	R	R	R	N	R	R	N	R	R	N	R	R	R	R
Nigeria	R	N	N	R	R	R	N	R	R	N	R	R	N	R	N	R	R
Namibia	N	N	N	N	R	N	N	N	N	N	R	R	N	R	N	R	N
Mauritius	R	N	N	N	R	N	N	R	N	N	R	R	N	R	N	R	R
Mauritania	R	N	N	N	R	R	N	N	N	N	R	R	N	R	N	R	N
Mozambique	R	N	N	R	R	R	N	N	N	N	R	R	N	R	N	R	N
Malawi	R	N	N	R	R	R	N	R	R	N	R	R	N	R	N	R	N
Mali	R	N	N	R	R	R	N	R	R	N	R	R	N	R	N	R	R
Madagascar	R	N	N	R	R	R	N	R	R	N	R	R	N	R	N	N	N
Liberia	R	N	N	R	R	R	N	N	R	N	R	R	N	R	N	R	N
Lesotho	N	N	R	N	R	R	N	N	R	N	R	R	N	R	N	R	R
Libya	R	N	N	N	R	R	N	R	R	N	R	R	N	R	N	R	N
Kenya	R	R	N	R	R	R	N	R	R	N	R	R	N	R	N	R	N
Guinea	R	N	N	R	R	R	N	R	R	N	R	R	N	R	N	R	N
Guinea Bissau	N	N	N	N	N	R	N	R	R	N	R	R	N	R	N	R	N
Ghana	R	N	N	R	R	R	N	R	R	N	R	R	N	R	N	R	N
Gambia	R	N	N	N	R	R	N	R	R	N	R	R	N	R	R	R	N
Gabon	R	N	N	R	R	R	N	R	R	N	R	R	N	R	R	R	N
Ethiopia	R	N	R	N	R	R	N	R	R	N	R	R	N	R	R	R	N
Eritrea	N	N	N	N	R	R	N	N	R	N	R	R	N	R	N	N	N
Eq. guinea	R	N	N	N	N	R	N	N	R	N	R	R	N	R	N	R	N
Egypt	R	N	R	R	R	R	N	R	R	N	R	R	N	R	R	R	N
Dem Rep C	R	N	N	R	R	R	N	N	R	N	R	R	N	N	R	R	N
Djibouti	N	N	N	R	N	N	N	R	R	N	R	R	N	R	N	R	N
Congo	R	N	N	R	R	R	N	R	R	N	R	R	N	R	R	R	N
Comoros	R	N	N	R	R	R	N	N	R	N	R	R	N	R	R	R	N
Cote d'Ivoire	R	N	N	R	R	R	N	N	R	N	R	R	N	R	R	R	N
Chad	N	N	N	N	R	R	N	R	R	N	R	R	N	R	N	R	N
Cape Verde	N	N	N	N	N	R	N	N	N	N	R	R	N	R	N	R	N
Central Africa	R	R	R	R	N	R	N	N	N	N	R	R	N	N	N	R	N
Cameroun	R	R	R	R	R	R	N	R	R	N	R	R	N	R	R	R	N
Burundi	R	R	R	N	R	R	N	R	R	N	R	R	N	R	R	R	N
Burkina Faso	R	N	N	R	R	R	N	R	R	N	R	R	N	R	R	R	N
Botswana	N	N	N	N	R	R	N	N	R	N	R	R	N	R	N	R	N
Benin	R	N	N	N	R	R	N	R	R	N	R	R	N	R	R	R	N
Angola	N	N	N	R	R	R	N	R	R	N	R	R	N	R	N	R	N
Algeria	R	N	N	R	R	R	N	R	R	N	R	R	N	R	N	R	N
Legal Instruments	Privileges and Immunities 1965	Phyto-Sanitary 1967	Natural Resources 1968	Civil Aviation 1969	Refugee Problems 1969	Trade Promotion 1974	Technical Cooperation 1975	Cultural Charter 1976	Mercenarism 1977	Additional Protocol Privileges 1980	Human Rights 1981	Rehabilitation Institute 1985	Fertilizer Devt. 1985	Child Rights 1990	Hazardous Wastes 1991	African Economic Community 1991	Maritime 1994

AUCIL 2009 ¹	This instrument does not require signature or ratification																																	54																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																											
Africa Investment Bank 2009	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N

2 This report was compiled by the State of the Union coalition secretariat (www.SOTU-africa.org) using AU sources <http://www.au.int/en/treaties>. There were no new ratifications between July 2014 and January 16, 2015. Note also that the full titles of the legal instruments have been abridged for the purposes of this table. Full title may be found on the AU site cited earlier.

3 The Comprehensive Africa Agriculture Development Program (CAADP) is not a legal instrument, but is included because it is an important initiative to boost agricultural productivity in Africa. R represents those countries that have ratified a compact/ investment plans.

4 The Statute of the AU Commission on international law (AUCIL) that was adopted to act as an independent advisory organ to the Union mainly in the areas of codification of the laws of the Union and the progressive development of international law in Africa. This Statute does not require signature or ratification and came into force upon its adoption on February 4, 2009.

Most Ratifying Countries

No.	Country	No. Of Instruments Ratified
1	Mali	36
2	Congo	33
3	Niger	32
4	Rwanda	30
5	Gabon	28
6	Burkina Faso	28
7	Togo	28
8	Libya	27
9	Senegal	26
10	Nigeria	26

Most Ratified Instruments

No.	Instruments	Year of Adoption	Number of Ratifications
1	Constitutive Act of the African Union	2000	54
2	African Charter on Human and Peoples' Rights	1981	53
3	Treaty Establishing the African Economic Community,	1991	49
4	Protocol Relating to the Establishment of the Peace and Security Council of the African Union	2002	49
5	Protocol to the Treaty Establishing the African Economic Community Relating to the Pan-African Parliament	2001	49
6	African Charter on the Rights and Welfare of the Child	1990	47
7	OAU Convention Governing the Specific Aspects of Refugee Problems in Africa	1969	45

Least Ratifying Countries

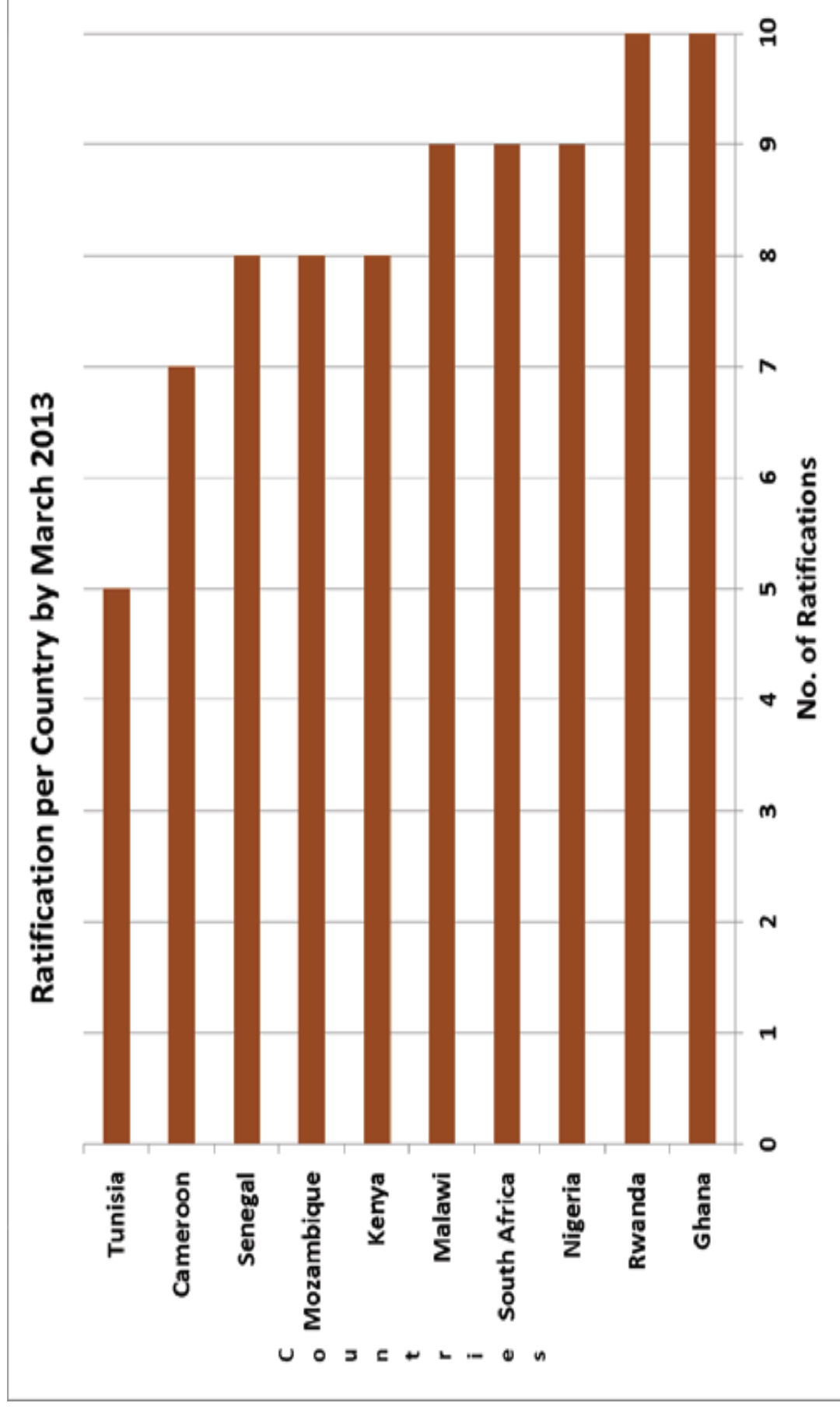
No.	Country	No. Of Instruments Ratified
1	South Sudan	1
2	Sao Tome & Princ.	4
3	Somalia	6
4	Eritrea	6
5	Botswana	10
6	Djibouti	12
7	Sierra Leone	13
8	Madagascar	13
9	Equatorial Guinea	13
10	Seychelles	15

Least Ratified Instruments

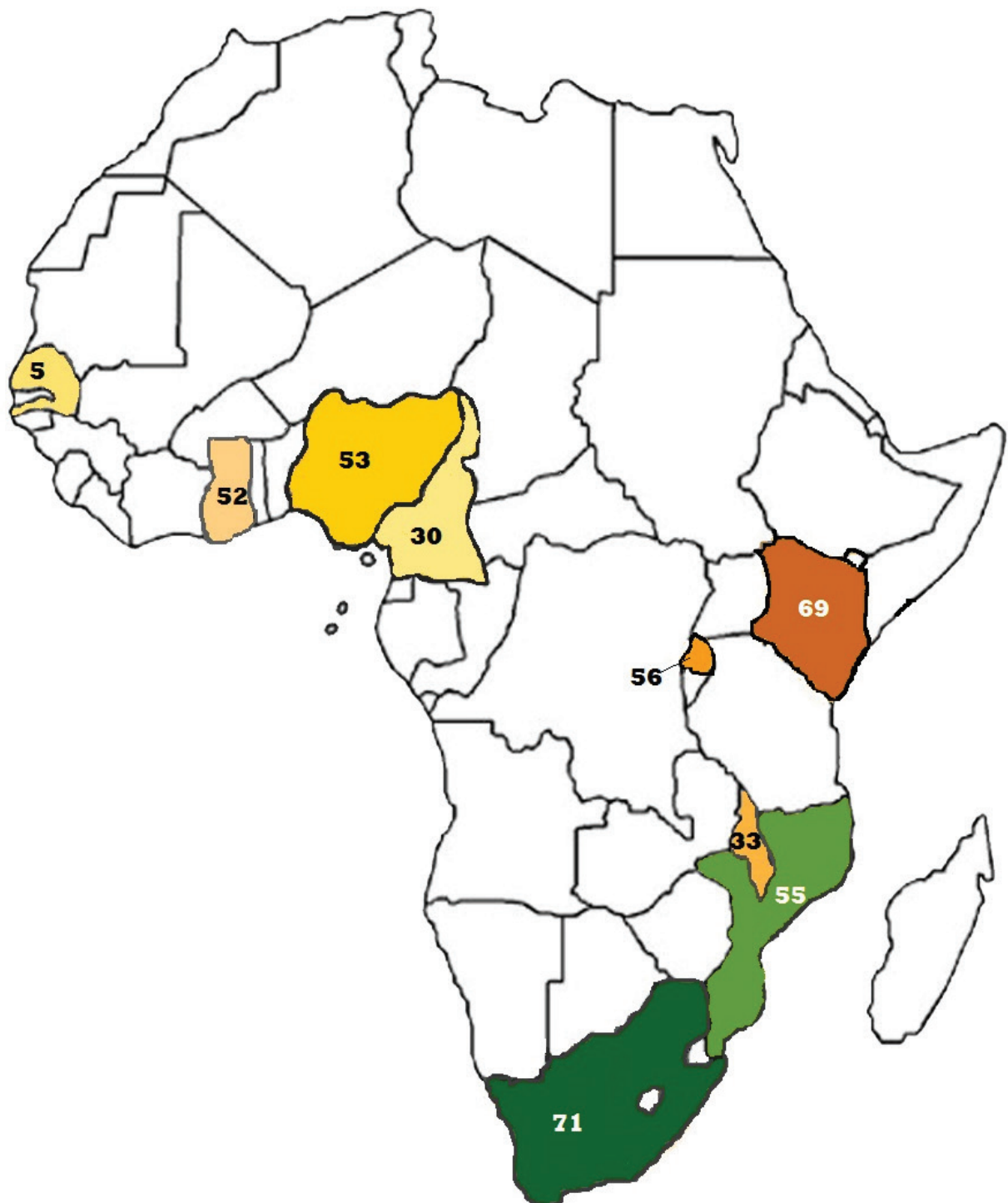
No.	Instruments	Year of Adoption	Number of Ratifications
1	Agreement for the Establishment of the African Risk Capacity (ARC) Agency	2012	0
2	Protocol on the African Investment Bank	2009	2
3	Revised Constitution of the African Civil Aviation Commission	2009	3
4	Protocol on the Statute of the African Court of Justice and Human Rights	2008	5
5	Convention for the Establishment of the African Centre for Fertiliser Development	1985	6
6	Inter-African Convention Establishing an African Technical Co-operation Programme	1975	6
7	Revised African Maritime Transport Charter	2010	7

Instruments	Came roon	Gha na	Ken ya	Mal awi	Mozam bique	Nige ria	Rwan da	S. Africa	Seneg al	Tunisi a
African Youth Charter	R 11/01/2011	R 28/10/ 2013	R 23/01/ 2014	R 13/08/ 2010	R 29/07/2008	R 21/04/2 009	R 07/08/20 07	R 28/05/20 09	R 17/09/20 09	R 08/06/201 1
Treaty Establishing African Economic Community	R 20/12/199 5	R 25/09/ 1991	R 18/06/ 1993	R 26/06/ 1993	R 14/05/1992	R 31/12/19 91	R 01/10/199 3	R 31/05/20 01	R 26/02/19 92	R 03/05/199 4
The African Charter on the Rights and Welfare of the Child	R 05/09/19 97	R 10/06/ 2005	R 25/07/ 2000	R 16/09/ 1999	R 15/07/1998	R 23/07/2 001	R 11/05/200 1	R 07/01/20 00	R 29/09/19 98	N
African charter on human and people's rights	R 20/06/19 89	R 24/01/ 1989	R 23/01/ 1992	R 17/11/1 989	R 22/02/1989	R 22/06/1 983	R 15/07/19 83	R 09/07/19 96	R 13/08/19 82	R 16/03/1983
African charter on democracy, elections and governance	N	R 06/09/ 2010	N	R 11/10/2 012	N	R 01/12/20 11	R 09/07/20 10	R 24/12/201 0	N	N
African Union Convention on Preventing and Combating Corruption	N	R 13/06/ 2007	R 03/12/ 2007	R 26/11/ 2007	R 02/08/2006	R 25/09/2 006	R 25/06/20 04	R 11/11/200 5	R 12/04/20 07	N
African Convention on the Conservation of Nature and Natural Res ources	R 18/07/197 7	R 17/05/ 1969	R 12/05/ 1969	R 06/03/ 1973	R 28/02/1981	R 02/04/1 974	R 19/11/197 9	N	R 03/02/19 72	R 21/12/1976
Revised African Convention on the Conservation of Nature and Natural Resources	N	R 13/06/ 2007	N	N	N	N	R 25/06/20 04	R 23/04/20 13	N	N
Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa	R 13/09/201 2	R 13/06/ 2007	R 06/10/ 2010	R 20/05/ 2005	R 09/12/2005	R 16/12/20 04	R 25/06/20 04	R 17/12/200 4	R 27/12/200 4	N
Protocol to the Treaty Establishing the Af rican Economic Community Relating to the Pan-African Parliament	R 04/11/200 3	R 15/09/ 2003	R 19/12/ 2003	R 03/07/ 2002	R 20/05/2003	R 23/12/2 003	R 22/08/20 01	R 03/07/20 02	R 14/10/20 03	R 01/03/200 4
Total	7	10	8	9	8	9	10	9	8	5

Figure 1: Rate of Ratification for 10 Selected Legal Instruments



Number of Laws, Policies and Institutions Established



Overall, this snapshot points to a lack of serious commitment to continental integration. Africa is far from universal ratification of AU instruments. Table 1, showing the total number of ratifications against 49 OAU and AU legal instruments, amplifies this snapshot. Mali, Congo, Niger, and Rwanda have the highest number of ratifications in ranking order. Of the 49 instruments, South Sudan, Sao Tome, Eritrea and Somalia have ratified five or fewer.

The Constitutive Act of the African Union has been ratified by all states: Ratifying this instrument is a requirement for AU membership, making its ratification anecdotal. Of interest is the asymmetry between the most and the least ratified instruments, as well as the generally slow ratification of the 49 instruments. Some arguments can be advanced to explain this asymmetry. It appears that over the past decade, Africa has been driven mainly by economic interests, explaining high numbers of ratifications for the Treaty Establishing the African Economic Community of 1991. On the other hand democratic transition on the continent has made most states appreciate the role of norms as a motivating factor for ratification - especially of human rights treaties, e.g. the African Charter on Human and Peoples' Rights.

While these explanations may be valid, an analysis of the least ratified instruments exposes a paradox: Economic interests should have, for instance, motivated AU member states to ratify the Protocol on the African Investment Bank, which has attracted only two ratifications five years after it was passed. The normative importance of human rights should also have encouraged more states to ratify the Protocol on the Statute of the African Court of Justice and Peoples Rights. While these instruments may not have been ratified aggressively due to the relatively short period they have been existence, a snapshot of the ratification status of the instruments indeed shows some general slack on the part of African states to ratify what they committed to. The reasons for this range from lack of political will to administrative lethargy; inadequacy or lack of the necessary bureaucratic coordination, and cooperation among relevant branches of government; and even lack of technical capacity.

While vital, ratification is not the ultimate driver of change at the national level. Implementation and domestication is the core of translating instruments into tangible results.

Chapter 2:

Democratic Governance, Transparency and Human Rights



Photo Courtesy: James Ochweri

Instruments under review:

The African Charter on Human and Peoples' Rights; The African Charter on Democracy, Elections and Governance; the OAU African Charter on Preventing and Combating Corruption.

Indicators:

Independence and resource allocated to electoral commissions; election-related violence, fraud and post-election unrest and disputes; existence of membership-based, inclusive and democratic political parties; civic education; credibility of electoral commissions; election petitions; election administration; establishment of institutions to ensure the rights of citizens and facilitating effective service delivery and good governance; CSO sustainability; media freedom; competitive service delivery; actionable service charters; laws, policies and institutions developed to combat corruption.

Introduction

This chapter reviews three major instruments of the African Union: The African Charter on Human and Peoples Rights (The Banjul Charter), the African Charter on Democracy, Elections and Governance (the Charter), and the OAU African Charter on Preventing and Combating Corruption. These instruments have the common objectives of enhancing popular participation in decisions, citizen engagement in political processes and in

decisions related to production, distribution and service delivery. Each of these instruments identifies bureaucratic, administrative and political corruption as key issues that should be tackled effectively through good governance, citizen participation, independent judicial bodies, and the increased role of civil society organisations in policy formulation, monitoring and evaluation and an increased role of the private sector in combating corruption. According to the 2014 United Nations Economic Commission for Africa's (UNECA) Africa Governance Report, corruption is a major challenge to democracy, good governance, security and effective service delivery.

The African Charter on Democracy, Elections and Governance is aimed at widening democratic space, providing a framework for citizen participation in elections and decision making in political processes as well as increasing the role of the media, civil society, youth and the private sector in shaping economic, social and political developments. In the Charter, state parties commit to institutionalise civilian control over the armed forces and pass legislation against attempts to change government by unconstitutional means. They agree to establish independent public institutions to promote peace and democracy, and ensure that such bodies are adequately resourced and accountable. In Chapter 7 they commit to take legislative and other measures to establish and strengthen independent and impartial electoral commissions. They undertake to establish effective mechanisms for redressing election related disputes; ensure all election candidates have access to state media; ensure there are binding codes of conduct between political actors before, during and after elections; and inform the African Union Commission of scheduled elections and invite it to send observer missions.

The Charter also calls for legislative measures to outlaw military changes of government; use of mercenaries to replace democratically elected governments; and use of dissidents or rebels to replace democratically elected governments. These measures or laws should also outlaw the refusal of incumbent governments to hand over power to legitimately elected leaders and amendment of constitutions or law to allow infringement of principles of democratic change of government. Other commitments include strengthening the capacity of parliaments and legitimate political parties to perform their functions, fostering popular participation, instituting regular legal and judicial reforms, and improving public sector management. It also commits them to promote private sector development, and to build and strengthen partnerships between governments, civil society organisations, and private sectors.

The Charter provides for recognition of the crucial role of women, youth and people with disabilities and involving them in decision making; consolidation of multiparty political systems; prevention of corruption; decentralisation of power and integration of traditional authorities into the larger political system. Member states are also required to and promote the principles and core values enshrined in the New Partnership for African Development (NEPAD) Declaration on Democracy, Economic and Corporate Governance and the African Peer Review Mechanism.

In the next sections, the 2014 Report examines the level of performance on these commitments by nine out of the 10 members of the AU covered by this study. (excluding Tunisia on which information was not readily available).

The Banjul Charter provides a framework for defining, promoting and protecting basic freedoms, rights and duties of states and citizens. It incorporates civil and political rights as agreed upon in international instruments. The Convention on Preventing and Combating Corruption provides a framework for policies and legislation aimed at eradicating, preventing and regulating corrupt acts and self-enrichment through abuse of office.

It also calls for declaration of assets by public officials before, during and when leaving office

Protection of basic freedoms

All the nine countries are governed by constitutions in which basic freedoms and human rights are outlined and protected through Bills of Rights. The nomenclature of human rights protection instruments includes constitutions, legislation, and adopted laws such as the Common Law in the British Commonwealth countries; and binding decisions of recognised courts and tribunals outside national jurisdictions. But in most cases either expressly - e.g. Chapter 4 of the Ghana Constitution - or implicitly - as in the case of Malawi⁵ - conventions ratified by member states do not automatically bind them unless they are backed by domestic legislation. Under Article 44 of the Constitution of the United Republic of Cameroon, any international agreement inconsistent with the Constitution cannot be ratified until the Constitution is amended. However, the Universal Declaration of Human Rights and The Banjul Charter are annexed to and part of the Cameroonian Constitution.

The constitutions of the nine countries recognise the human rights and freedoms enshrined in the Banjul Charter and those in the International Covenant on Civil and Political Rights (1993). The equal rights of men and women are entrenched in all the constitutions, with the Ghanaian Constitution further providing for the right of spouses to inherit and have equal access to and share of property jointly acquired during marriage (Articles 22 and 23). It also protects the right to maternity leave (Article 27), though such specific rights are not found in the constitutions of the other eight countries. The Ghanaian Constitution is also the most robust of the nine countries on economic, social and cultural rights. It provides for the right to work (Article 24); the right to free and compulsory basic education (Article 25)⁶, children's rights to care, assistance and maintenance (Article 28), and the protection of children against hazardous work (Article 27). The Constitutions of Ghana, Kenya, Rwanda and South Africa contain provisions outlawing slavery, servitude and forced labour. The South African Constitution has extensive provisions on labour relations (Article 23), which go beyond the right to work. It covers fair labour practices, the right to be unionised or form and join employers' organisations and the rights of trade unions. It has more pronounced provisions on environmental rights (Article 24) compared to the other eight constitutions. It provides for the right to health care, food, water and social security (Article 27). The provisions on the right to education are more elaborate than those in the constitution of Ghana: They include principles of equity, practicability, redress of inequality, non-discrimination and the right to establish educational institutions (Article 29). Article 45 spells out the duties of individuals to their communities in the same way as they are defined in Articles 27, 28 and 29 of the Banjul Charter.

The state of Democracy in Africa

Most African countries are nominally democracies, mostly defined by the key democratic indicator of holding regular elections, despite these being marred by violence, exclusion of candidates or voters, and allegations of vote rigging. Regular, free and fair elections facilitate the creation of a culture of democracy. For this to be institutionalised, electoral commissions have to be depoliticised, professional, independent, autonomous, effective and well-resourced in terms of financial, human, infrastructural, logistical and operational capacity. In the nine countries covered by this study - including Senegal and South Africa - all those that have a good record of free, fair and peaceful elections are also plagued by election-related violence, fraud and post-election unrest and disputes. This is aggravated by elite competition to control traditional and new resources, political corruption and elite personalisation of power and leadership in political parties, politicisation of security forces and politicians' interference in elections, and biased media involvement. Ethnic cleavages and party alliances during elections have especially been evident in Kenya⁷, Malawi⁸, Nigeria⁹ and South Africa¹⁰. But democracy is much more than holding regular elections and certifying them to be 'free and fair'. It comprises many other elements which,

when examined together, give a more robust picture of the state of democracy in Africa.

Another element that paints a comprehensive picture of democracy in a country is the existence of membership-based, inclusive, and democratic political parties. The constitutions in the nine countries covered in this study almost invariably provide for the right to form political parties. They also require political parties to be inclusive and their membership to be of a national character and not based on ethnic, regional, religious or other sectional bases. Parties are required to operate in conformity with the principles of democracy. However an in-depth study of the countries point to the undemocratic manner in which political parties nominate candidates to contest elections, the dominance of political party founders in the decision making on almost all issues, and the prominent role played by the elite, who fund these political parties, in determining their policies and leadership. Campaign financing by high profile business interests has been raised as a serious concern in Nigeria, where *Businessday* (November 2, 2014) revealed the influence by donors and multinational corporations (MNCs) in election campaigns. Nomination fees demanded by parties were 25 million Naira for presidential tickets and 5 million for gubernatorial ones.

These were not affordable for the common people¹¹. In Ghana, the two major political parties tend to mobilise intra and inter-ethnic differences in the northern regions for votes¹², while in Kenya, electoral primaries prior to the 2013 elections were chaotic and 'an affront to the principles of democracy and the rule of law'¹³. Third, civic education plays an important role in institutionalising the culture of democracy. In all the nine countries, civic education is supposed to be provided by the State, especially through the national education curriculum - as envisaged in the Charter on Democracy. However, the State has not been proactive or prominent in championing this clause. Civic education is limited to voter education initiatives organised by NGOs or consultancy firms - usually funded by international development agencies like the United Nations Development Programme - in the run-up to general elections. Such occasional and cyclic interventions do not support the creation of a sustainable culture of peace or peaceful elections.

Another key element of democracy is democratic elections. This is provided for under the constitutions of all the nine countries. They establish electoral commissions and empower parliaments to pass laws and regulations governing election administration. But the credibility of electoral commissions has been questioned in all countries, except South Africa (until the last election in 2013). Election petitions are increasingly common between elections in some countries and sometimes do overlap. The 2012 election in Ghana, for instance, was followed by a hotly contested election petition¹⁴. This was also the case in Kenya, Malawi, and Senegal's last elections. Irregularities in voter registers, ghost voters, vote buying, faulty vote counting, delays in delivering voting materials and failure to allow representatives of contending parties the rights to be present at time of counting, have also hampered smooth election administration in most countries.

Fifth, establishing democratic institutions is another key determinant of positive democratic culture in society. This is provided for under Chapter 6 of The African Charter on Democracy, Elections and Governance. Kenya's new Constitution remains one of the best examples on the continent with regard to compliance with this requirement: It established the National Security Council (Article 240) and 10 independent commissions (Article 248)¹⁵, all of which are aimed at handling the rights of citizens and facilitating effective service delivery and good governance. These institutions set standards and handle public grievances. The South African Constitution established the Commission for the Promotion and Protection of the Rights of Cultural, Religious and Linguistic Communities and the Commission for Gender Equality. Also established are the Public Protector, the South African Human Rights Commission, and the Electoral Commission (Article 18 as amended

by section 4 of the Constitution, Second Amendment Act of 1998). The Rwandan Constitution also introduced novel institutions that are more advanced than the conventional bodies aimed at democracy, efficient public service delivery and good governance. These include the Gacaca process which was established to facilitate national reconciliation, peace and participatory justice; Community Service While in Service (TIG) under which prisoners work in communities as a way of promoting reconciliation and reintegrating them into society; solidarity camps for peace education (*ingando* in Kinyarwanda) used for peace education; The Peace Academy, a project of the Armed Forces which conducts research and offers short courses on conflict management and peace building¹⁶, and the Institution of Civic Education aimed at promoting positive values.

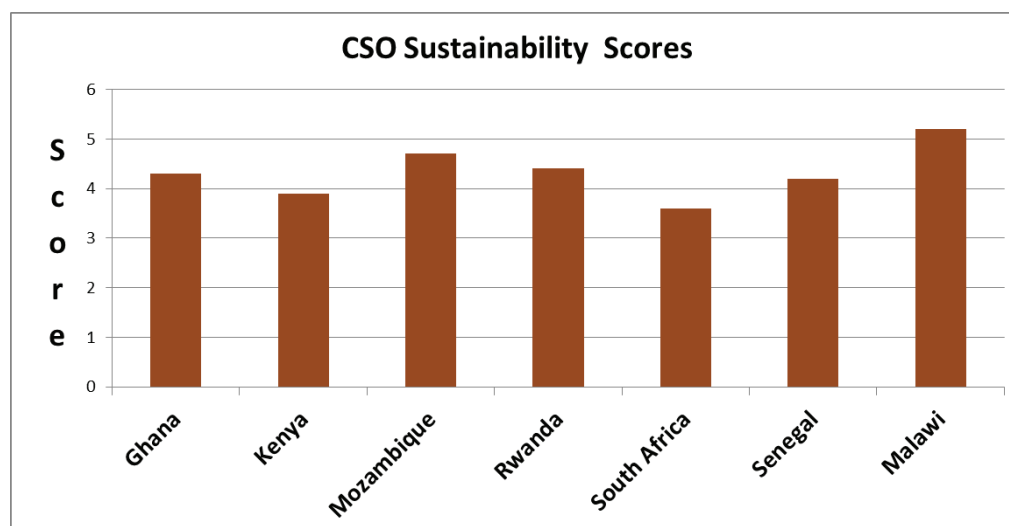
These organs complement and support traditional institutions, such the electoral commissions, which have been established in all the nine countries; election laws that guarantee equal rights of adult suffrage, the right to access information, which is provided for in all the constitutions - although procedures for applying for and obtaining information are cumbersome, as in Ghana. Laws on access to information are given by the constitution but not backed by independent legislation - as in Malawi, for instance, making it difficult for information to be divulged¹⁷.

Civil society organisations as democratising institutions

CSOs are also institutions that need to be supported to organise awareness campaigns on democracy, good governance and transparency. But in the majority of the countries covered by this study, they are neglected and as such only depend on donors for core funding. They are also restricted in their resource mobilisation and advocacy activities. Although CSOs have been active in countries such as Kenya, Ghana, Senegal and South Africa, their sustainability remains tenuous.

Figure 3 and 4 show the CSO Sustainability Indices as well as media freedom for some of the case study countries.

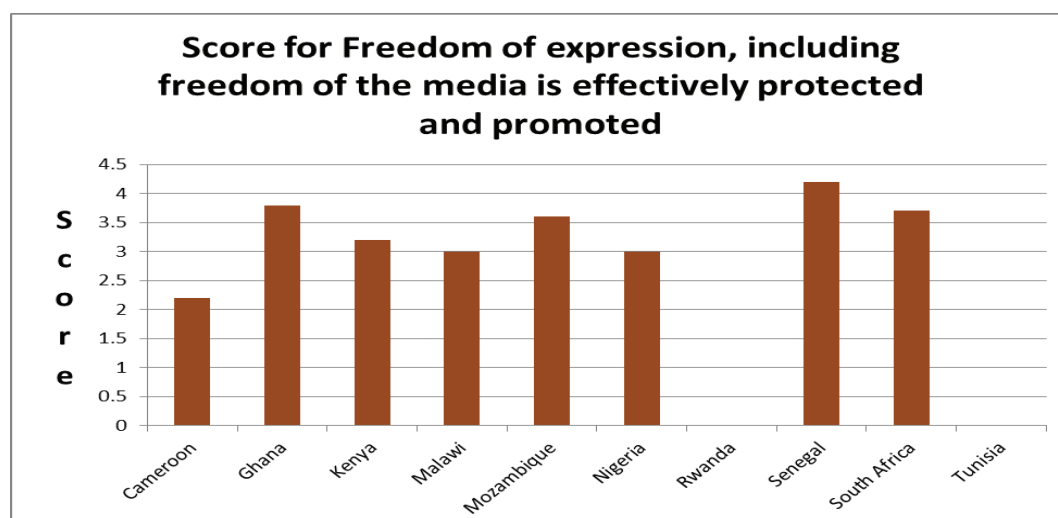
Figure 3: CSO Sustainability Index



Source: (USAID, 2013)

While freedom of expression, including freedom of the media, is effectively protected and promoted across the case study countries, this is not as robust as envisaged in the charters on democracy and human rights. Figures 3 and 4 shows the ratings of civil society sustainability and media freedom across the case study countries

Figure 4: Rating for Media Freedom Protection and Promotion



Source: Freedom House, 2013

Table 4 categorises the democracies sampled in the study.

The Economist's Intelligence Unit's (EIU) annual 'Democracy Index' paints a comprehensive picture of democracy across 167 countries. The series recognises four regime types ranging from 'full democracies' on the one end of the spectrum, to 'authoritarian regimes' on the other. Between the two are the 'flawed democracies' and 'hybrid regimes'. The EIU March 2014 report titled 'Democracy and its Discontents' describe the progress of democracy in sub-Saharan Africa as 'slow and uneven'. None of the nine case study countries currently ranks as a full democracy: Three were recognised as flawed democracies, three as hybrid democracies, and three as authoritarian regimes.

5 In the case of *Chakufwa Chihana vs R*, it was held that The Banjul Charter was not applicable because it had not been domesticated by national law. In contrast, Section 79 of the constitution of Senegal provides that international law and international conventions supersede domestic law.

6 Also enshrined in the Constitution of Cameroon (Preamble), but in jurisprudence preambles are not necessarily interpreted as part of binding laws.⁷ See Beign, J, (2009), 'Election violence and fragility in Africa; drawing lessons from the 2007/2008 postelection violence' paper presented at a conference on Financial Markets, Adverse Shocks and Coping Strategies in Fragile States' Accra-Ghana 21-33 May 2009; Kadima, D; and Awuor, F. 2014, 'Kenya's decade of experiments with political party alliances and coalitions: Motivations, impact and prospects in *Journal of African Elections*, Vol. 13 No.1 June 2014, pp150 – 180; Kadima, D.2014, 'An introduction to the politics of party alliances in socially divided Africa'; in *Journal of African Elections* Volume 13 No.1, June 2014, pp -24

7 See Beign, J, (2009), 'Election violence and fragility in Africa; drawing lessons from the 2007/2008 postelection violence' paper presented at a conference on Financial Markets, Adverse Shocks and Coping Strategies in Fragile States' Accra-Ghana 21-33 May 2009; Kadima, D; and Awuor, F. 2014, 'Kenya's decade of experiments with political party alliances and coalitions: Motivations, impact and prospects in *Journal of African Elections*, Vol. 13 No.1 June 2014, pp150 – 180; Kadima, D.2014, 'An introduction to the politics of party alliances in socially divided Africa'; in *Journal of African Elections* Volume 13 No.1, June 2014, pp -24

8 See Lembani, S., 2014, 'Alliances, coalitions and the weakening of the party system in Malawi' in *Journal of African Elections* in Africa, Vol. 13 No. 1, June 2014, pp115-149; Malyamkono R.I; and Kanyongolo, F.E (Eds.,) *When Political*

Parties Clash, Dar es Salaam, Tema Publishers.

9 See Bratton, M., 2008, 'Vote Buying and Violence in Nigerian Election Campaigns', Afrobarometer Working Paper No. 99 Cambridge; Cambridge University Press.

10 Chiroro, B., 2008; 'Electoral Systems and Electoral Violence in the SADC Region' on www.africanreview.org/events/paxafrica2008/bchiroro.pdf; Bogdnor, V., and V. Butler (Eds.) 1983, *Democracy and Elections: Electoral*

11 Zambulon Agomuo, 'Nigerian Democracy in Trouble' in *Businessday*, November 2, 2014.

12 Institute for Democratic Governance, 2014, 'Study to Audit and Monitor Compliance and Implementation of Protocols, Conventions and Decisions of the African Union Member States' submitted to SOTU, p.23

13 Korwa G. Adar; P.L.O. Lumumba and Pamela N. Inuit, 2013, 'Study to Audit and Monitor Compliance and Implementation of Protocols, Conventions and Decisions of the African Union Member States' Submitted to SOTU, p.25

14 Nana Ado Danka Akufo-Addo and others versus John Dramani Mahama, The Electoral Commission and National Democratic Congress (2012)

15 They include: the Kenya National Human Rights and Equality Commission, the National Land Commission; the Independent Electoral and Boundaries Commission; The Parliamentary Service Commission, The Judicial Service Commission, the Commission for Revenue Allocation, the Public Service Commission, the Salaries and Remuneration Commission, the Teachers Service Commission and the National Police Service Commission.

Systems and their Political Consequences, Cambridge, Cambridge University Press; Booysen, S., 2014, 'Causes and Impact of Party Alliances and Coalitions on the Party System and Cohesion in South Africa', in *Journal of African Elections*, Vol. 13, No.1, June 2014, pp. 66-29.

16 Ngarukiye, S., 2013; Rwanda Compliance and Implementation of African Union's Selected Conventions and Protocols, Final Report, Submitted to SOTU, pp22-23

17 According to the Malawi SOTU Report, 2014, when calls were made on the Speaker of the Malawi Parliament to provide information on the declaration of assets by the then President in 2012, the Speaker declined claiming he was not compelled to divulge such information.

18 See K. Kiragu and G. Mutahaba, 2005, *Public Service Reforms in Eastern and Southern Africa: Issues and Challenges*, Mkuki Na Nyota Publishers, Dar es Salaam.

19 Ayee, J.R.A, 2001, 'Civil Service Reform in Ghana: A Case Study of Contemporary Reform Problems in Africa,' Report submitted to the African Association of Political Science, Addis Ababa

20 Ebai J.E and Forje J.W, 2009, 'Challenges of Administrative Reforms and Public Services Accountability' The Case of Cameroon' in *Cameroon Journal of Democracy and Human Rights*, Vol. 3 No.1 pp71-81 on www.cjdh.org

The EIU Report also provides the overall scores from 2006 to 2014 showing the progress of democratic performance in these countries during the period. This report focuses on progress from 2010 to 2014.

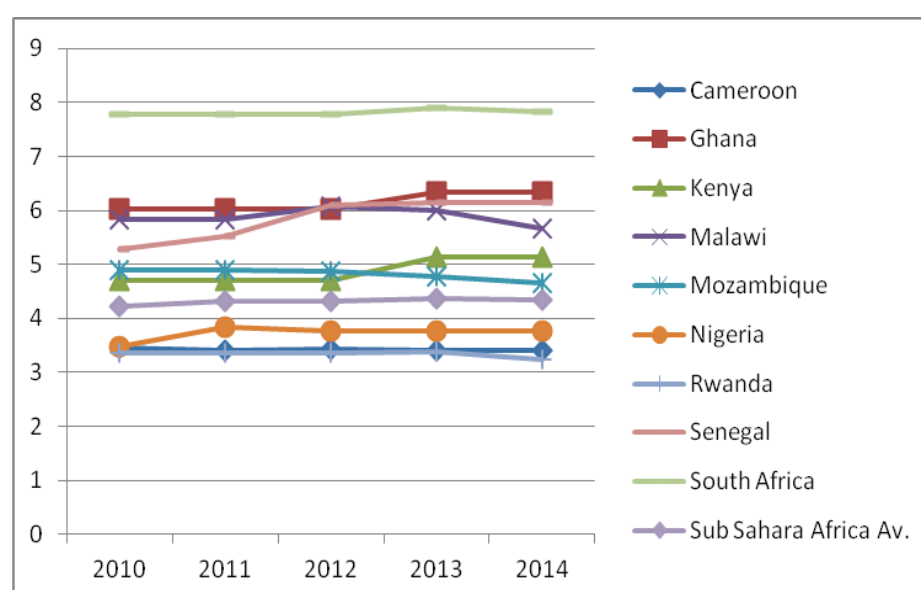
Table 4 also provides the average trend for sub-Saharan Africa for comparative reference. Below is a table of democracies sampled in the study.

Table 4: Trends in Democratic Governance

Country	Rank	Overall score	1.Electoral process and pluralism	2.Functioning of government	3.Political participation	4.Political culture	5. Civil liberties	Classification
Ghana	68	6.33	8.33	5.36	5.56	5.63	6.76	Flawed
S. Africa	30	7.82	8.33	8.21	7.78	6.25	5.00	Flawed
Senegal	74	6.15	7.92	5.71	4.44	5.63	7.06	Flawed
Malawi	89	5.66	6.58	4.29	5.00	6.25	6.18	Hybrid
Kenya	97	5.13	4.33	4.29	6.11	5.63	5.29	Hybrid
Mozambique	107	4.66	4.42	3.57	5.56	5.63	4.12	Hybrid
Nigeria	121	3.76	5.67	2.86	3.33	3.13	3.82	Authoritarian
Cameroon	130	3.41	0.75	3.57	3.89	5.00	3.82	Authoritarian
Rwanda	135	3.25	0.83	5.00	2.22	4.38	3.82	Authoritarian

Source: EIU Democracy Index 2014 – Democracy and its Discontents

Figure 5: Trends in Africa's Democratic Index



Source: EIU Democracy Index 2014 – Democracy and its Discontents

The countries' performances are varied, but register three key trends - the upward trends in Kenya, Ghana, and Senegal; the decline in Malawi; and the relative stagnation of the state of democracy in the Sub-Saharan. While positive trends for some of the countries is commendable, this set of performances shows that there is a need to consolidate democracy in Africa, and set ambitious targets that will set most countries at par with the likes of Mauritius, which ranked higher in the index (17th globally).

Political, economic and social governance

The African Charter on Democracy, Elections and Governance calls for fostering popular participation, judicial and legal reforms, improved public sector management, promoting private sector development, and building strong partnerships between government, private sector and civil society organisations.

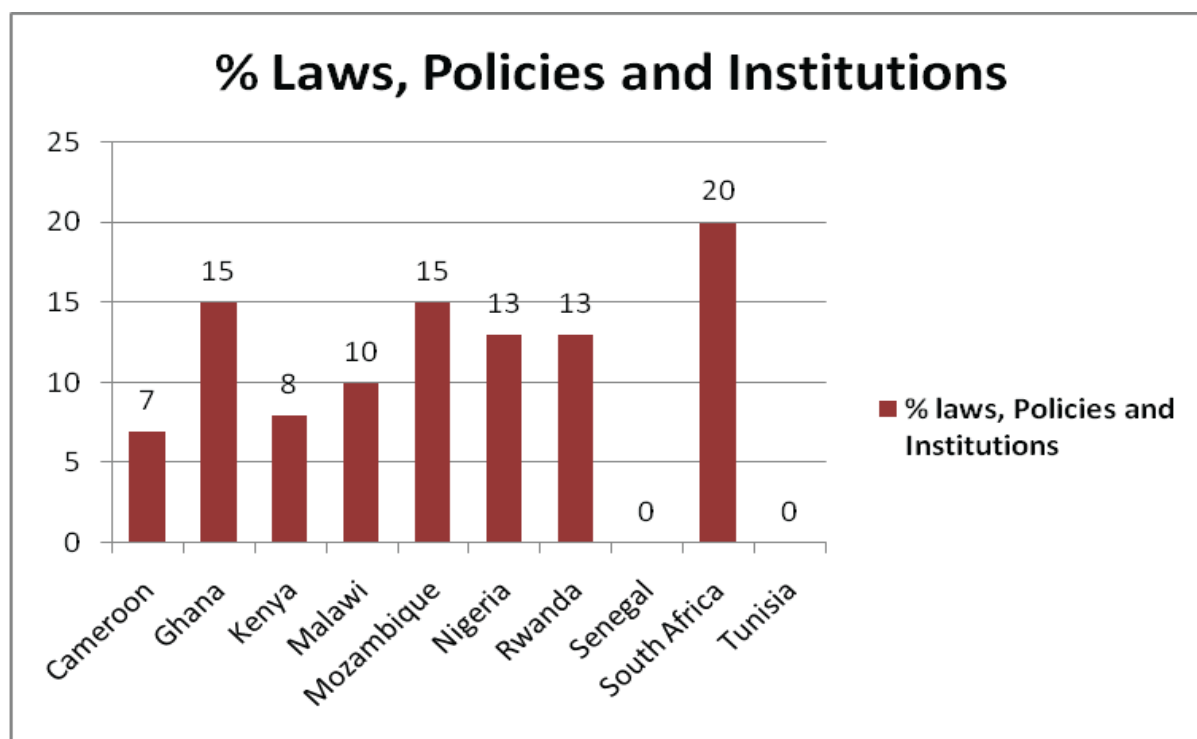
Ghana was among the first countries in West Africa to take a lead in improving public service delivery and public sector management while Kenya and South Africa have been at the forefront of private sector development and public-private partnerships in Eastern and Southern Africa. All the nine countries have undertaken continuous civil service and public sector reforms. In general, these reforms have resulted in more competitive service delivery, actionable service charters that citizens can use to demand their rights and accountability, less patronage in recruitment for senior government positions and a high calibre of cabinet secretaries selected and vetted by parliament as is the case in Ghana, Kenya, Rwanda and South Africa.

In spite of the efforts and substantial achievements made, some problems still persist. Behaviour change among civil servants has not been easily achievable. Civil servants retain immense influence and power, and are reluctant to cede ground. In decentralised and federal systems, such as in Cameroon, Nigeria and South Africa, reforms have not achieved the intended level of success due to lack of coordination between the central and provincial governments¹⁸. According to Ayee (2001), 'public sector reforms in Ghana were impeded by the failure of civil servants to respond to the need for change, a vague and weak reform framework, poor sequencing and haphazard implementation, total absence of monitoring and evaluation capacity, excessive dependence on donor funding and poor incentives¹⁹. Other factors include lack of preparedness, lack of ownership of the reform programmes, apprehension among staff, especially those charged with carrying out reforms, lack of consensus among key stakeholders, , including political parties slowed down public sector reforms in Cameroon²⁰. In Malawi, lack of political will on the part of top leaders, lukewarm commitment on the part of senior civil servants, excessive donor dependency, and lack of transparency have stagnated reforms²¹. These problems have not been peculiar to Ghana,

Cameroon and Malawi but seem to have been experienced in Nigeria, Kenya, Mozambique and Senegal²².

Summary of laws, policies and institutions developed to implement the African Charter on Democracy, Elections and Governance.

Figure 6: Percentage of Laws, Policies and Institutions Established to Implement the Charter on Democracy, Elections and Governance



Note: While Senegal is yet to domesticate the Charter, there was no available data on the exact number of laws, policies, and institutions already in place to support its compliance . There was also no information on Tunisia.

Low	# of Laws, Policies and Institutions Established to Implement the African Charter on Democracy, Elections and Governance						High
Cameroon	Kenya	Malawi	Nigeria	Rwanda	Mozambique	Ghana	S. Africa



21 See Annie Chisomo Mabomba, 2012, 'Examining Malawi's Administrative Reform and its Impact on Service Delivery' MA Dissertation submitted to the University of Fort Hare on [http://ufh.ac.za/bitstream/490/Final completed Dissertation - Annie pdf](http://ufh.ac.za/bitstream/490/Final%20completed%20Dissertation%20-%20Annie.pdf) downloaded on the 5/12/2014; Chauncy Simwaka, 2006, 'Malawi: Lessons Learnt from First Reform' Lead to New Approach' in *OECD Journal on Budgeting* Vol. 6 No.2

22 Crook, R.C, 2010, 'Rethinking civil service reforms in Africa: Islands of effectiveness and organisational commitment' in *Journal of Commonwealth and Comparative Politics*. Vol. 48:4, 479-504; Kiragu, K, and G. Mutahaba, 2005, *Public Service Reforms in Eastern and Southern Africa: Issues and Challenges*, Mkuki Na Nyota Publishers, Dar es Salaam

Combating corruption

Corruption remains one of the greatest challenges facing the African continent. However, all the nine case study countries have adopted different strategies for fighting the vice. This is one area where CSOs globally - especially Transparency International, through its Corruption Perceptions Index (CPI) - remain keen on maintaining conversations and public debates, putting most governments on the defence with regard to their anti-corruption efforts. No wonder AU heads of states saw it fit to formulate the AU Convention on Preventing and Combating Corruption. An analysis of the state of combating corruption in these countries follows.

Kenya

In Kenya, anti-corruption efforts date back to 1956 when the first Prevention of Corruption Act (Cap 65) was passed and has since been amended, with the most comprehensive set of amendments being in 1997 when the Kenya Anti-Corruption Authority was established, and then transformed into the Ethics and Anti-Corruption Commission in 2011. Several analysts of the anti-corruption legislation in Kenya have, however, observed that the laws give too much discretion to civil servants, allowing collusion between the latter and politicians²³. Earlier in 1996, Wanjala and Owiti reported that about 48.8 per cent of Kenyans did not believe the law was efficacious enough to stop corruption while about 57.4 per cent would not report incidences of corruption to the police because they had no confidence in them²⁴.

Ghana

Ghana has also passed many anti-corruption laws and established several anti-corruption bodies. The Commission for Human Rights and Administrative Justice established under Article 216 of the Constitution of 1992 is charged with investigating cases of corruption and recommending them for prosecution. The Financial Intelligence Centre (FIC) deals with terrorism-related financial transfers and money laundering, while the Economic and Organised Crimes Office (EOCO) investigates other related crimes. The FIC and EOCO are quasi-judicial bodies and work closely with the Commission for Human Rights and Administrative Justice. The Ghana Revenue Authority Act, 2009 (Act No. 791), establishes the guidelines for transparency. The Internal Revenue Act of 2000 (Act No. 597) sets standards for income tax and accounting principles - though it does not create offences related to the management of tax affairs. The Petroleum Revenue Management Act of 2011 (Act No. 815) provides for transparency and accountability of petroleum receipts. Ghana Tax Guidelines of 2012 summarise the rules and regulations in the Tax Laws, though they contain no legal provision on transparency.

Among institutions established to deal with corruption is the aforementioned Commission for Human Rights and Administrative Justice, the Serious Fraud Office established under the Serious Fraud Act of 1993 (Act 466) and the Internal Audit Agency established by the Internal Audit Agency Act, 2003 (Act 658). In addition, Chapter 14 of the Constitution establishes the Public Service Commission, which regulates entry, promotion and emoluments in the civil service. Article 286 provides for the duty of public servants to declare their property or assets and liabilities to the Auditor General within three months of taking office, every four years thereafter, and at the end of service. Failure to declare property or assets and under Article 287. This is also backed by the Public Office Holder (Declaration of Assets and Disqualification) Act, 1998 (Act 550). Public procurement is governed by the Public Procurement Act of 2003 (Act 663) establishing the Public Procurement Authority. The Financial Administration Act of 2003 (Act 654) regulates financial management of the public sector (revenue, expenditure, assets, liabilities and resources). The Internal Audit Agency Act of 2003 (Act 658) established the agency to audit the accounts of ministries, departments, agencies and municipal and district authorities for quality assurance. The Right to Information Bill is aimed at promoting the right to public

information. The National Identity Register Act of 2008 (Act 750) establishes the National Identity Register and protects citizens' privacy.

Nigeria

Consecutive regimes in Nigeria have passed laws and established institutions aimed at fighting corruption. Under the Criminal Code, (Cap 77 of the Laws of the Federation of Nigeria) sections 98-116 contain provisions outlawing abuse of official duty and penalising any corrupt person in the public service. Section 114 of the code specifically deals with corruption by judicial officers.

This is supplemented by the Criminal Justice Miscellaneous Provisions Decree No. 84 of 1966, which applies to the Lagos State only. Then there is the Penal Code (Cap 89 of the Laws of Northern Nigeria), 1963, which covers more corrupt practices than the Code, and the Public Officers (Investigation of Assets) Decree No. 5 of 1966, which empowers the Head of State to direct public officials to declare their income and assets, and to establish a tribunal to investigate whether any assets owned by public officials have been legitimately acquired. The Corrupt Practices Decree No. 38 of 1976 adopts definitions of corrupt practices contained in the AU Convention: It sets up the Corrupt Practices Investigation Bureau, with powers of investigation. The Code of Conduct is another legal instrument contained in the 1979 and 1998 constitutions, and seeks to prevent conflict of interest on the part of public officials. It established the Code of Conduct Tribunal with judicial powers to try violators of the Code. The Recovery of Public Property (Special Military Tribunals) Decree, passed in 1984, empowered the government to investigate the activities of public officials suspected of illicit self enrichment.

The Corrupt Practices and Other Related Offences Act of 2000 was the first to be passed after the restoration of civilian rule in Nigeria²⁵. It replaced the Corrupt Practices Decree No. 38. Its passage has been controversial. Even after its adoption, for instance, a suit was brought to the High Court questioning the power of the Federal Government to investigate corruption. The High Court confirmed the constitutional legality of the Act and the Corrupt Practices and Other Related Offences Commission²⁶. The commission is empowered to investigate the conduct of all public officials except the President, Vice President and Governors, who can only be investigated by a tribunal set up by the Chief Justice²⁷. The Money Laundering Prohibition Act of 2004 criminalised individuals manufacturing 500,000 Naira and corporate bodies 'washing' 2 million Naira without passing through legal channels. In order to combat fraudulent activities through the Internet, the government passed the Advance Fee Fraud and Other Related Offences Act of 2006 as well as the Fiscal Responsibility Act of 2007 to facilitate transparency in the management of public finance and other resources. The Economic and Financial Crimes Commission Act established the Economic and Financial Crimes Commission, whose Financial Intelligence Unit investigates corruption. The Nigerian Extractive Industries Transparency Initiative, a part of the Global Extractive Transparency Initiative, seeks to ensure due process is followed in the payments made to host governments. Despite the plethora of anti-corruption institutions in Nigeria²⁸, corruption is still on the rise.

Malawi

Malawi does not have as many laws aimed at fighting corruption as the other countries such as Kenya, Ghana and Nigeria-. Until 1995, the Penal Code was one of the most prominent laws. Section 90 defines corruption and prescribes a maximum sentence of up to three years imprisonment, notwithstanding the gravity or monetary value of the corrupt transaction. One of its shortcomings is the limitation of its investigation and prosecution powers in the hands of the Director of Public Prosecution (DPP), an appointee of the President working directly under the Minister for Justice. This legal framework limits the capacity of the DPP to prosecute mem

bers of the executive. Malawi's 1995 Constitution reduced the power of the President to appoint the DPP by making the office holder's appointment subject to approval of the Public Appointments Committee of Parliament.

In 1995 the Malawi Parliament passed the Corrupt Practices Act, which established the Independent Anti-Corruption Bureau, a body empowered to investigate and prosecute corruption cases. Its powers to prosecute are, however, subject to the consent of the DPP. As a result, few of the cases the bureau investigated were forwarded to court. The Act has raised the maximum sentence from three to seven years, again irrespective of the gravity of the offence. One major weakness of the law is its narrow definition of corruption: It confines corruption to public servants and only covers acceptance of gifts as an act of favour to the giver.

The law does not cover other types of corrupt practices, and as such does not bestow prosecutorial power over such offences to the Bureau. According to Kamanga (2004)²⁹, the evidential burden of proof is constrictive and corruption trials take too long, hence violating the human rights of suspects as stipulated in the Constitution's bill of rights. He also describes the conditions of prisons in Malawi as being below the standards envisaged in human rights conventions, with corruption convicts reportedly suffering strokes while in custody. The boundary between civil and criminal liability is not clear, especially with regard to breach of contract, and there is no mechanism to monitor the activities of judicial officers³⁰. Other laws and institutions include the Assets Act, 2002, which requires public servants to declare their assets on assumption of office to the speakers of parliament: This law does not, however, compel the Speaker to disclose information declared. The Money Laundering, Proceeds of Serious Crime and Terrorist Financing Act of 2006 established the Financial Intelligence Unit to investigate money laundering and terrorist financing activities, while the Procurement Regulations of 2004 established mechanisms for open, competitive and transparent procurement through tenders. They have been promulgated under the Public Procurement Act No. 8 of 2003. The Banking Act gives powers to the Malawi Central Bank to oversee the transactions of other banks and all other institutions, while the Public Audit Act of 2003 introduces financial procedures aimed at transparency in managing public finances.

Article 7 of the first anti-corruption legislation, the Anti-corruption Law (Law No. 6/2004), creates the offence of passive corruption which targets receivers - not givers - of bribes or any benefit aimed at influencing their performance of public duties. Article 9 creates the offence of active corruption, targeting bribe givers. Article 10 covers illicit enrichment, while Article 2 stipulates legal provisions on corruption in the private sector.

Article 4 requires public servants to declare assets, while Article 6 calls for inclusion of an anti-corruption clause in public contracts. Article 13 provides for the protection of witnesses while Article 19 provides for the establishment of an Anti-Corruption Office within the Office of the Public Prosecutor, with Article 103 providing for the extradition of offenders by court decision. Under Article 153, the government is empowered to enter into agreements or treaties with other states for mutual assistance and extradition. The 2004 anti-corruption law incorporates most of the provisions of the AU Convention but it confines types of corruption only to active and passive corruption, leaving out other corrupt practices. The legislation is supplemented by the Law on Public Integrity (2012), which prohibits public servants from holding memberships on boards of non-public companies. The Witness and Protection Act, 2012, protects informants and witnesses in corruption cases, while the Law on Disclosure by Public Servants, 2012, compels public servants, their spouses and dependents to declare incomes and assets. The Money Laundering Law (2013) outlaws loan sharking, funding of terrorism and all forms of tax fraud. Anti-corruption institutions include the Central Office for Combating Corruption, which is empowered to investigate and

prosecute. The Inter-Ministerial Commission for Public Sector Reform is responsible for implementing the country's anti-corruption strategy mentioned earlier. The Administrative Tribunal, a department in the President's office, inspects and certifies state expenditure: This, however, limits its autonomy, contrary to the provisions of the AU Convention. The Ombudsman's Office, established in 2005, handles complaints from the public on their rights to services. It also investigates and reports to Parliament and the Attorney General, through the Portal of Government and various ministerial websites.

Cameroon

Cameroon's principal instrument of anti-corruption is the Penal Code (Law No. 67-LF-1 of June 2, 1967). It includes in the category of corruption and corrupt practices bribery, indulgence, undue demand, compulsion of a public servant, procuring influence and misappropriation of funds. The offence of bribery covers acts of giving or receiving bribes (section 134). The offence of 'indulgence' covers only public employees who act to the detriment of the state, their employer or the public (section 137). Undue demand ascribes to any public officer who demands a fee, due, duty or tax in order to help the giver not to pay the proper price (section 142) for a service. Compulsion of public servants covers offences by a person who, through threats, gets a civil servant to act contrary to his/her public duty (section 160), while procuring influence and also relates to compelling a public servant to act contrary to required process or procedure (section 161). Misappropriation of public funds is also a crime under section 184. Although it covers many corrupt practices, the offences in the Code relate only to corruption with regard to public services.

The Anti-Corruption Commission of Cameroon was established under Decree No. 2006/88 of March 11, 2006. The Commission investigates and publishes texts on corruption. The Commission does not prosecute: It advises on the action to be taken. The Constitution of 1972 was amended by Law No. 2006/3 April 25, 2006 to include a requirement on civil servants to declare their assets. Law No. 2003/004 of April 21, 2003 amended the Banking Act by removing the use of confidentiality on information required by the authorities relating to accounts being investigated for corruption. The National Agency for Investigating Financial Matters is empowered to investigate accounts with suspicious amounts of money. Part XI of the Cameroon Criminal Procedure Code (Law No. 2005/007 of July 27, 2005) governs extradition: Section 642 allows extradition for offences of universal jurisdiction under international treaties and conventions ratified by Cameroon. In this context, Cameroon has ratified the UN Convention Against Corruption, the UN Convention against Transnational Organized Crime, and the African Union Convention on Preventing and Combating Corruption³⁴. Overall, Cameroon has incorporated most of the provisions of the AU Convention. However, the impact of the instruments on the corruption profile of Cameroon remains minimal.

South Africa

South Africa has braved the struggle to strengthen transparency and accountability since the end of apartheid. South Africa's 2004 Anti-Corruption Act was the first comprehensive piece of legislation that sought to implement the UN Convention on Corruption (Preamble). It established the Anti-Corruption Unit, which receives complaints and investigates instances of corruption, as well as educates the public on the effects of corruption. The law also established a Corruption Prevention Department within the Anti-Corruption Unit, which is tasked with examining legislation and policies, and advising Parliament on areas of improvement. Other departments are the Investigative Department (investigation) and the Social Engagement Department (public awareness and education). The law guarantees the independence of the unit. The leadership of the unit is selected by a panel, which recommends a list to Parliament. Members of Parliament then vote and recommend candidates who receive 75 per cent of the votes to the President for appointment of one of the recommended candidates to head the unit. Qualifications for candidates to be

nominated are spelt out in section 9 of the law. Provisions for search and seizure of property are enshrined in section 17, and whistle blowers are protected by provisions under section 22. Chapter 5 spells out other institutions the unit is required to collaborate with, its financing, and the procedure for handling complaints against it. Schedule 1 prescribes the minimum standards to be included in the Code of Conduct, which governs the behaviour of the commissioners and staff of the unit.

A startling feature of the law is that it does not define what corruption or corrupt practices are covered in it. Secondly, the law does not create specific offences and sanctions that courts can impose in the event of their infringement. Third, the law concentrates more on the conduct of the commissioners and staff of the unit, while some of the offences related to corruption are only included in the schedule to the law as part of the Code of Conduct and the Disciplinary Code. In effect, the law does not adequately empower law enforcing agents and the courts to adequately fight corruption.

Other laws that contain guidelines on transparency include the Public Finance Management Act, 1999, whose Chapter 10 provides for disciplinary procedures for financial misconduct (sections 81-85) and criminal proceedings in criminal offences (section 86). The Financial Management of Parliament Act of 2009, as amended by the Finance Management of Parliament Act No. 34 of 2014, lays down procedures and standards to be observed in the management of the finances of Parliament to ensure transparency, accountability and sound management of the revenue, expenditure, assets and liabilities of Parliament (section 2).

The Protected Disclosures Act No. 26 of 2000 makes provision for the protection of employees who provide information on their fellow employees or their employers in the private and public sectors. It prevents employers from subjecting employees to any detriment arising out of their disclosure of protected information (section 3) and outlines remedies for such employees (section 4). The only shortcoming of this law is that while it protects whistle blowers as envisaged in the AU Convention, it only protects whistleblowers who are in employment and as regards their employers or fellow employees. The Financial Intelligence Centre Act, No. 38 of 2001 as amended by the General Intelligence Amendment Act, of No. 11 of 2013, established the Financial Intelligence Centre and Counter Money Laundering

Council mandated to combat money laundering and the funding of terrorist activities. The law establishes the Financial Intelligence Centre, which collects information and provides the same to investigating authorities. The Counter-Money Laundering Advisory Council advises the Minister in charge of law enforcement on policies and practices adopted or to be adopted. (Section 18). The law prescribes procedures for monetary institutions to use in processing transactions, modalities for keeping records of the transactions and sets down a duty of disclosure regarding information relevant to these transactions (part 2 and 3). Institutions and persons dealing with information on transactions covered by this law are protected from criminal or civil action under section 38.

The law provides a comprehensive list of measures to be taken to promote compliance, formulation of rules, training and monitoring, as well as preparation of directives by the centre, among other tasks (section 43). Accountable institutions commit punishable offences under the law if they fail to keep records, destroy or tamper with records, fail to assist the centre, fail to report cash transactions or suspicious or unusual transactions, make unauthorised disclosure, fail to send reports to the centre, fail to report electronic transfers, fail to comply with orders to implement rules, misuse information or if they fail to register with the centre etc. (Sections 46 to 67). Powers for search and seizure are provided for in section 70 and the jurisdiction of courts in section

71. The provisions of this law are comprehensive and in line with the AU Convention.

The Promotion of Access to Information Act, No. 2 of 2000, seeks to protect the constitutional right to information held by the State (section 32 of the 1994 constitution). It applies to all records (regardless of when they came into existence) and all information held by officials or independent agents of public or private bodies (chapter 2). Its provisions override any other law preventing disclosure of public information (section 5). The law provides for the right of a member of the public to request any information related to a public body, except the Cabinet and its committees, and judicial functions of the courts protected under the Constitution and special tribunals under section 2 of the Special Investigating Units and Special Tribunals Act No. 74 of 1996 (sections 11 and 12). Chapters 2 and 33 cover types of disclosure, and the modalities of accessing information respectively. Permissible grounds for refusal of access are outlined in chapter 4, which also covers access to records of private bodies (sections 50-73). Sections 74, 75, 76, and govern appeals against decisions. The law, as such, fully complies with provisions of the AU Convention. Other laws include the Banking Act, No. 94 of 1990, which empowers the Registrar of Banks to require any bank to furnish information on compliance with the Act (section 7), and allows repayment of money unlawfully obtained by any person who conducts the business of banking without official registration (83); the International Cooperation in Criminal Matters Act, No. 75 of 1996, which governs mutual assistance in enforcing confiscation orders (chapter 3 and 4); and the Prevention of Organised Crime Act, No. 121 of 1998, which deals with crimes related to organised crime, money laundering and racketeering. The latter imposes a severe penalty of life imprisonment or a fine of 1 million Rand.

The South African laws on money laundering impose stricter sanctions than those found in the other eight countries. This has, however, not stopped criminals from devising strategies for evading confiscation of property or prosecution: Criminals mostly use family or friends to register illegally acquired assets. Others resort to 'shell companies' registered with bank accounts but not actual transaction bearers. Use of front businesses is also common - where such entities run businesses but their proceeds are co-mingled with illicit proceeds.³⁵

Senegal

The criminal laws of Senegal include offences related to corruption. Making an offer to bribe as well as actually giving bribes are punishable offences under the law. However the scope of corruption is limited to bribes and does not include other corrupt practices.³⁶ The law on illicit enrichment has also been passed, although it has not been regularly or effectively enforced. This enables offenders to transfer funds out of the country without legal compliance checks. There are no professional codes of conduct for public servants - as is the case in Ghana or

Section 157 of the Penal Code covers offences relating to conflict of interest. Its application extends to serving and retired civil servants. However, offenders use proxy companies and third parties to avoid liability. The law on declaration of assets covers only the President and magistrates of the Government Accounting Office as well as judges of the Cour des Comptes.³⁷

Management of budgets and public funds is governed by the Finance Law No. 2001-09 of October 15, 2001.

It sets out procedures for managing and accounting for public funds, tax collection procedures and time lines and formats for presentation of budgets. This law provides for preparation of annual reports on budgets and expenditure, which are presented to Parliament. The donor community, working together with the government, has also

introduced the Integrated Public Financial Management System (SIGFIP) to track budget expenditure. This has strengthened budgetary control and made it more transparent.

Public procurement in Senegal is governed by Decree No. 2002-550 of May 30, 2002, the Public Markets Law. This law has not been very effective as many public servants find loopholes in it. It also contains numerous exemptions, which allow actors to circumvent public procurement processes.

Overall, the mechanisms for fighting corruption in Senegal are not robust. This is mainly due to lack of effective opposition to corruption; low levels of activity by CSOs - including trade unions - in the fight against corruption; inadequate checks on executive decision making; absence of quality standards and accountability measures in public service delivery, especially in health, education, forestry and water; lack of transparency in government operations, especially in procurement; and a general cultural acceptance of corruption³⁸. In spite of these weaknesses, it is paradoxical that corruption in Senegal has decreased and the country is ranked lower in the corruption index when compared with the other case study countries

Rwanda

Rwanda has demonstrated strong political will in fighting corruption by formulating consistent policies, enacting sound related legislation, establishing an institutional framework against corruption and implementing various other measures to prevent and combat corruption in the country. In this context, Rwanda has put in place an appropriate legal framework and the right policies and institutions to fight against corruption. Several laws constitute important legal tools to prevent and fight corruption in the country such as the Law No. 23/2003 of August 7, 2003 on prevention and suppression of corruption and related offences; and the Organic Law No. 01/2012/OL of May 2, 2012 instituting the Penal Code (articles 220-227).

Good management of public property is governed by Law No. 12/2007 of March 27, 2007 on public procurement, while the procedure for the disposal of state assets is determined by Law No. 50/2008 of September 9, 2008.

There are other laws concerning specific bodies or sectors, which reinforce the legal framework against corruption like Organic Law No.06/2006 and Organic Law No.16/2003 of June 27, 2003 governing political parties and politicians. Others include Organic Law No. 61/2008 of September 10, 2008 on the leadership Code of Conduct; Law No. 47/2008 of September 9, 2008 on prevention and penalising of money laundering and financing terrorism; Law No. 35/2012 of September 19, 2012, relating to the protection of whistle-blowers as well as the Code of Ethics and Conduct for Media and Journalists in Rwanda (December 2004). This last Code, however, does not serve as a rigorous rule: It is a covenant that preserves the highest possible professional standards among journalists in their quest to perform a public function of news dissemination, information and exchange of ideas as well as providing scrutiny over the conduct of public affairs.

The institutional framework for tackling corruption comprises the Office of the Ombudsman, the Office of the Auditor General (OAG), Rwanda Public Procurement Authority (RPPA), the National Public Prosecution Authority (NPPA), the Rwanda National Police and the Anti-Corruption Unit in the Rwanda Revenue Authority (RRA). All these institutions issue annual reports with recommendations to relevant organs and authorities. Among other key institutions that contribute to the prevention of corruption include the Public Service Commission, the Rwanda Development Board (RDB) -preventing corruption in the investment and business environment, the National Bureau of Standards in charge of examining the quality of different types of imports into the country, and the National

Examinations Council, which prepares and corrects different national examinations. Moreover, each district in Rwanda has an anti-corruption watch committee, which plays the role of whistle-blower. Finally, there is the National Anti-Corruption Advisory Council, whose main objective is to link the efforts of different relevant institutions through notable exchange on strategies and experiences in fighting corruption. In particular, the Office of the Ombudsman is an independent public institution established by the Constitution (Article 182).

One of its mandates is to prevent and fight against injustice, corruption and other related crimes. It also receives declarations of assets from senior government officials and other public officials with a view to preventing the embezzlement of public funds: These officials must declare assets every year as provided for by Law No. 25/2003 of August 15, 2003 establishing the organisation and functions of the Office of the Ombudsman.

In order to be effective in the implementation of its mission, the Chief Ombudsman and two Deputy Ombudsmen also have the initial investigative powers granted to police officers. Their staff may also be granted similar powers. Consequently, some cases of corruption and related offences are identified by the Office.

According to Rwanda Bribery Index 2012, “perceived corruption in Rwanda rose from 23.6 per cent in 2011 to 30.5 per cent in 2012. However, despite these negative changes, the trend was still positive. This means that despite multiple efforts by the Government of Rwanda against corruption, this malpractice is still present in the country. “Petty corruption is far from being eradicated and the key challenge for anti-corruption institutions is the low level of reporting on corruption in Rwanda”³⁹. However, Rwanda still remains one of the least corrupt countries in the world and definitely the least corrupt in the East African region. According

Transparency International ratings, Rwanda was ranked as the 66th least corrupt country (out of 178 countries ranked)⁴⁰ in the world in 2010 and 49th in 2011 (out of 183 countries ranked) while the East African Bribery Index 2012 confirmed that the bribery prevalence in Rwanda remained the lowest in region because of its continuing efforts to fight the vice in all fields.

Corruption Perception Index

The CPI is known for its consistency and comprehensiveness in investigating the state of corruption globally by Transparency International. Their annual reports produce tools for policy advocacy around ensuring government commitment to fighting corruption.

Figures 7 and 8 indicate perceptions of corruption by rank and score in the nine countries.

Figure 7: Corruption Perception Index by Rank

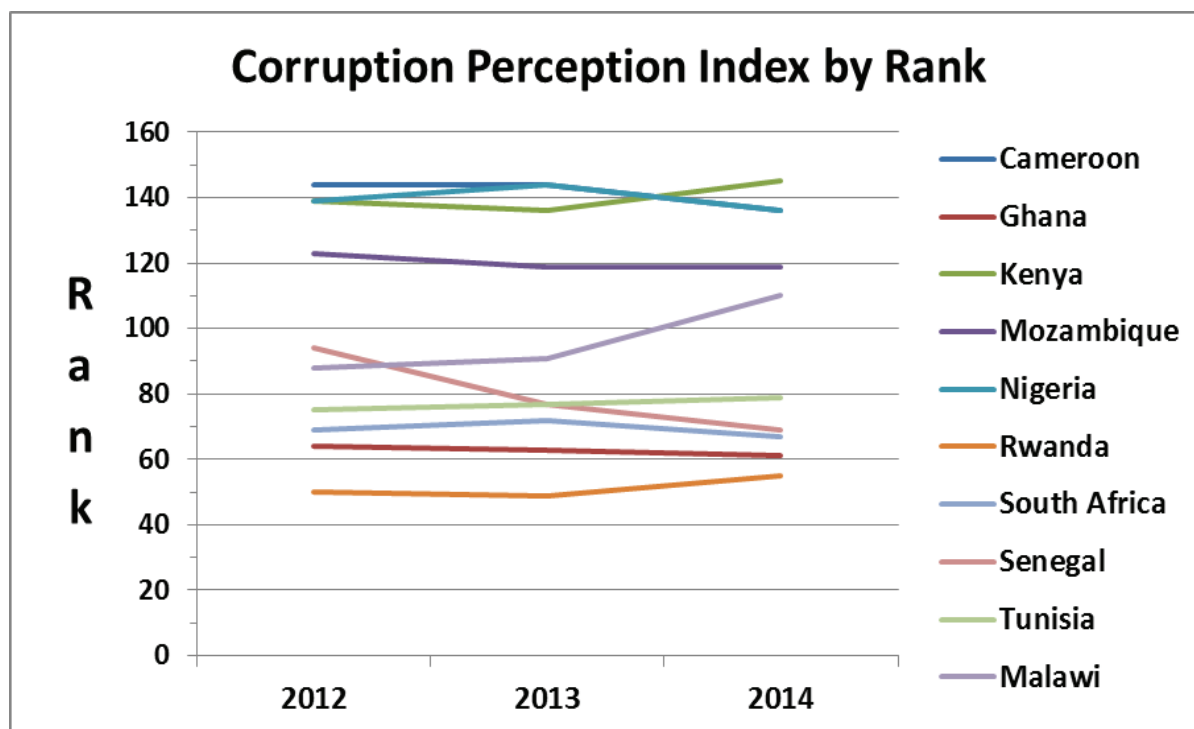
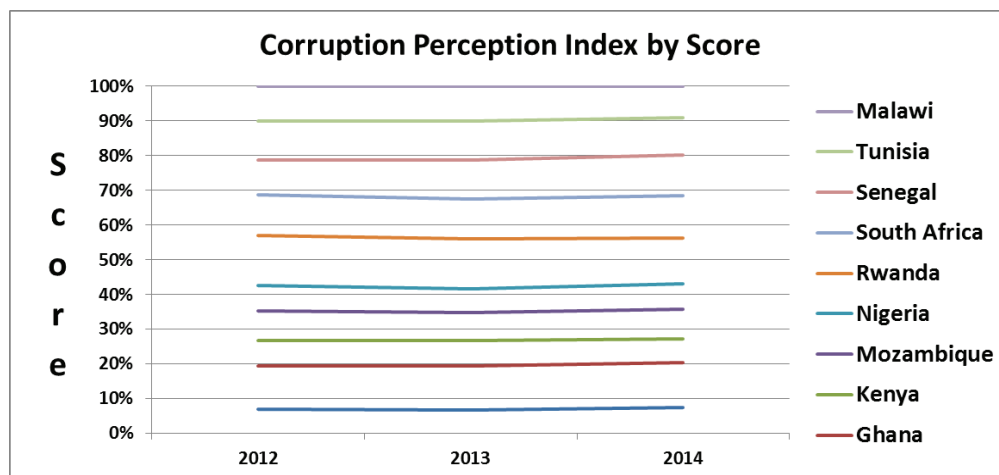
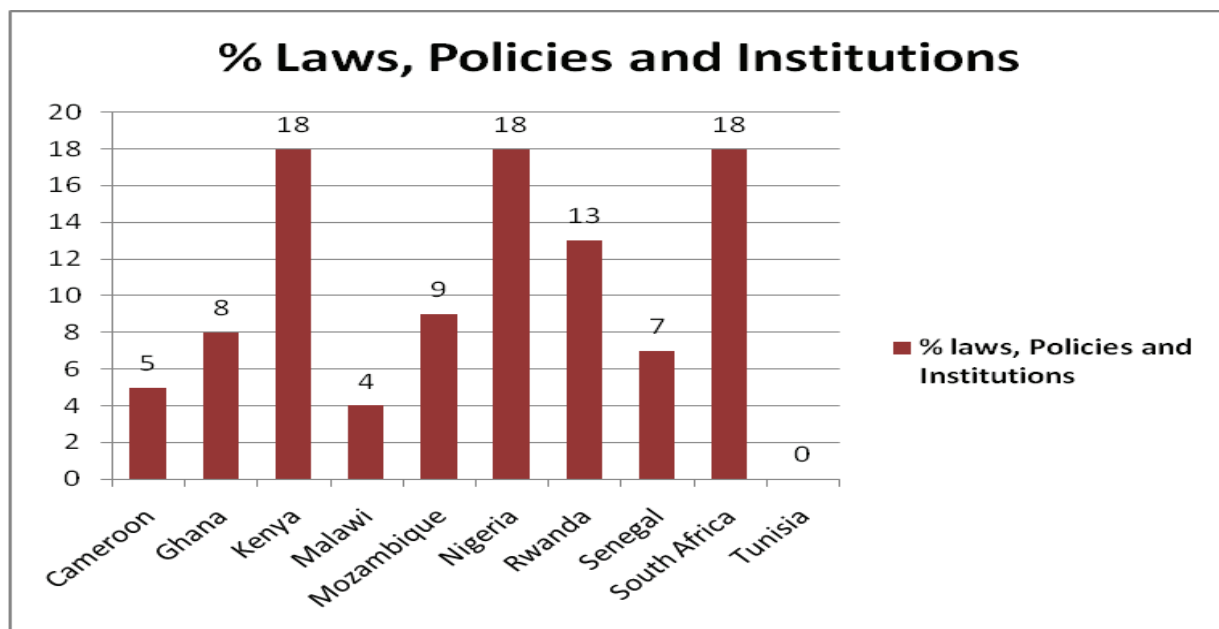


Figure 8: Corruption Perception Index by Score



From the graphs, Rwanda remains one of the top performers in preventing and fighting corruption, while Kenya and Nigeria still register the highest prevalence of the vice. A steady decrease in corruption in Ghana is also commendable as this demonstrates results from the show of commitment to conform to the provisions of the Convention.

Figure 9: Percentage of Laws, Policies and Institutions Established to Combat Corruption



Low	# of Laws, Policies and Institutions Established to Implement the African Charter on Democracy, Elections and Governance						High
Cameroon	Kenya	Malawi	Nigeria	Rwanda	Mozambique	Ghana	S. Africa



23 Cited by Joshua M. Kivuva, 2013, 'Reforms Without Change: Kenya's Unending 'War on Corruption' in P. Chainie and P.B. Mihyo, 2013, *Thirty Years of Public Sector Reforms in Africa. Selected Country Experiences*, Fountain Publishers, Kampala, Chapter 2 p.38

24 K.K. Wanjala and O. Owiti, (eds) 1996, *The Anatomy of Corruption in Kenya: Legal, Political and Socio-Economic Perspectives*, Kenya Centre for Law and Research International, Nairobi,

25 It is important to note that the Bill for this Act was rejected several times by the National Assembly until CSOs exerted pressure on the members through demonstrations and public debate.

26 Attorney General of Ondo State and Others v Attorney General of the Federation and Others(2002) 9NWLR (Part 772) 222, (2002) 27 WRNI

27 The sitting President at that time refused to give his assent to the Bill even after the decision of the Supreme Court. The National Assembly overruled him

28 Other institutions include the Public Procurement Bureau, established by the Public Procurement Act. The Nigerian Investment Promotion Commission (use of IT) and the Federal Inland Service (Rules of income and other taxes)

29 The 2004 Amendment to the Act requires that in case the DPP withholds consent to prosecute, grounds for this have to be put in writing and submitted.

30 Ivy Kamanga, 'Combating Corruption: Challenges in the Malawi Legal System' Resource, The Tenth International Training Course on the Criminal Justice Response to Corruption, Participant Resource materials Series No.76. Downloaded from <http://www.goggle.co.uk>

31 'SOTU, 2014 'Malawi Report', submitted to SOTU, p12.

32 N. Martine, M Chene and Rhodes, 2012, 'Overview of corruption and anti-corruption in Mozambique' U4 Expert Answer, Anti-Corruption Resource Centre, Transparency International and Chr. Michelsen Institute, Downloaded from www.U4.no on December 7, 2014

33 Martini et.al, op.cit.

- 34 Summarised from a Note on 'Corruption Under Cameroon Law' by Justice Mbah Acha Rose Formundam; Vice President, Court of Appeal, South West Region, Cameroon, unloaded from [http:// search. Yahoo.com](http://search.yahoo.com) on December 7, 2014³⁵ Louis de Koker, 2002, 'Money Laundering in South Africa', Centre for the Study of Economic Crime, RAU University, Johannesburg, on [www.http//general rau.ac.za/law/English/Censen_2htm](http://general.rau.ac.za/law/English/Censen_2htm))
- 36 Ibid.
- 37 Ibid p.68
- 38 Ibid pp 47-56
- 39 Ibidem
- 40 Transparency International's Corruption Perceptions Index (CPI), 2010 and 2011
- 41 OECD Development Centre, 'Social Institutions and Gender Index: Cameroon'; on <http://genderindex.org> downloaded on the 9/12/2014, p 1
- 42 The Protocol was ratified in 2007 and the African Union Solemn Declaration on Gender Equality and Women's Empowerment in 2004
- 43 Based on a Statement by Judite Taesla, a Mozambican Delegate to the Third World Committee of the United Nations' General Assembly in October 2009
- 44 Ibid, p.46
- 45 Nigeria Compliance Report, p. 47
- 46 Julie Middleton, 2014, 'Translating South Africa's AU Commitments from Words into Action' in *Journal of African Union Studies* (Jo AUS), Vol. 3 Issue 1, 2014, pp.23-36 at p.25

Chapter 3:

Rights of Women



Instruments under review:

Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa

Indicators:

Measures taken to ensure women's rights to inheritance; The minimum age of marriage for women provided by law, and degree of enforcement; Parental authority; Domestic violence; Female genital mutilations; Allocation of funds to institutions dealing with FGM; Sexual harassment; Land ownership, use and sell by women; The participation of women in all walks of life; Awareness creation activities on sexual and reproductive health and rights; The number of prosecuted rape cases; Adequacy of financial and logistical resources allocated to law enforcement bodies established to enforce laws protecting the dignity of women; Minimum age of marriage with or without parental consent; Women's access to justice; Participation of women in decision making at various levels; Women participation in executive offices; Women gross enrolment and completion rates at kindergarten, primary and secondary school levels; Number of seats taken by women in parliament; Access to education; Disparities between urban and rural schools; Children out of school; Gender parity of education; Number of laws, policies and institutions established to protect the rights of women.

Introduction

The Protocol on the Rights of Women, also called the Maputo Protocol, seeks to broaden the human rights spelt out in the Banjul Charter to address rights specific to women. Article 2 calls upon member states to include in their laws and constitutions clauses on the principles of equality between men and women. Article 3 guarantees the right of women to dignity and calls for prohibition of all forms of exploitation and degradation against women. Article 4 covers the right to life, integrity and security, and calls for laws punishing acts of violence against women and policies promoting peace education. It also calls for laws and policies eradicating cultural beliefs, practices and stereotypes that perpetuate the tolerance of acts of violence against women; to set up institutions that support victims of violence; to pass laws that allow prosecution and punishment of women traffickers and ban experiments on women without their consent.

Article 5 calls for the abolition of harmful practices, prohibits female genital mutilation, human sacrifice, medicalization and para-medicalization of females. Article 6 calls for equal rights in marriage, prohibition of forced marriage; sets a minimum age of marriage at 18; provides for equal rights to nationality and children in marriage; and rights for married women to acquire and own property. Rights on divorce are spelt out in Article 7, which calls for the right to access judicial services, and equal representation of women in the judiciary and law enforcement agencies.

Article 9 calls upon member states to ensure equal participation of women in leadership and governance and Article 10 calls for their increased participation in peace processes. Article 12 calls for the elimination of all forms of discrimination in all spheres of education and the elimination of all forms of stereotypes in textbooks, syllabi and the media; to protect women from sexual harassment in educational institutions and provide institutional support to victims of sexual harassment.

Equal opportunity in employment, remuneration, choice of occupations, participation in business and special protection for women are covered in Article 13. Article 14 calls for the protection of the sexual and reproductive rights of women, while Article 15 commits state parties to ensure women have the right to nutritious and adequate food, while equal rights to housing and acceptable living conditions are covered by Article 16 and women's cultural rights by Article 17.

The right to a healthy environment is enshrined in Article 18, and the right to fully enjoy sustainable development in Article 19. Rights of guardianship to children after the death of a spouse and equal rights of inheritance are covered by Articles 20 and 21. Article 22 calls upon state parties to protect elderly women and ensure they are free from violence. Article 23 provides for protection of women with disabilities. Article 24 calls for protection of poor women and treatment of pregnant or nursing women in detention or other forms of custody.

Implementation of the Maputo Protocol is examined in terms of civil and political rights (Articles 2 to 12), and economic, social and cultural rights. In the next sections, the report presents measures taken by various countries to implement the protocol. Progress will be analysed based on indicators such as laws, policies and institutions established to protect the rights of women, degree of gender-based discrimination, freedom from violence and harmful cultural practices, rights to education and training opportunities, and the representation of women in public offices and their level of participation in the political process in each country.

Laws, policies and institutions

Africa has what is considered by many to be the best and most progressive women's rights

policy framework in the Protocol on the Rights of African Women. Translating these policy and legal provisions into reality will put women at the centre of participation and decision making for the continent's sustainable political and socio-economic development. One strategy for realising this is the formulation of policies, establishment of institutions, and enactment of laws that internalise, implement, and domesticate the Protocol's provisions at the national level. Even as most African constitutions provide for the rights of women and countries establish these institutions, the impact of implementing this policy framework has been low, albeit with some promise.

In **Cameroon**, the country's 1972 Constitution begins with a Declaration that the human person possesses inalienable and sacred rights 'without distinction as to race, religion, sex or belief' (Preamble) and affirms the country's commitment to the fundamental freedoms enshrined in the Universal Declaration of Human Rights, the Charter of the United Nations and the African Charter on Human and Peoples Rights and all duly ratified conventions.

The Constitution also commits the state to ensure the equality of all citizens before the law (Article 1 (12)). The courts of law have affirmed this right, especially when it comes to rights to inheritance. But customary law, which covers the majority of women in rural areas, still considers women as subordinate. The OECD Social Institutions and Gender Index Report of 2014, for instance, noted that, 'In some cases married women may be considered as part of her husband's estate, grouped together with other property⁴¹'. Wife inheritance also remains common in this country.

While Cameroon has incorporated most of the civil, political, economic, social and cultural rights in its Constitution, some laws and practices have remained an impediment to the successful implementation of the Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women. There are no laws providing for the rights of special groups such as the elderly, people living with disabilities, female heads of households and nursing mothers in detention or other institutions of custody. Cameroon has, therefore, not achieved much below 50 per cent - of the goals and objectives of the Protocol⁴².

Ghana is one of the 36 AU member states that have ratified the Maputo Protocol. Article 17(1) of the Ghanaian constitution guarantees equality for all before the law and prohibits any form of discrimination. Article 17(4) empowers Parliament to pass laws and policies outlawing discrimination. Through the Ministry of Gender, Children and Social Protection, established in 2001, the government has implemented the Affirmative Action Policy under which Gender Desk Offices have been set up in all institutions of government whose tasks include promotion of official policies on gender issues; promoting the participation of women in all walks of life and organising awareness creation activities on sexual and reproductive health and rights. The country's Law Reform Commission is mandated to review legislation to secure full implementation of the constitution, various policies and international commitments. The Constitution of **Rwanda** (Article II) also provides for equality for all and all previous laws that had discriminatory provisions were amended to comply with it. The government has established the Ministry of Gender and Family Protection, the National Women's Council, the Gender Monitoring Office and the Women Rwandan Parliamentarians Network, all institutions that implement various provisions of the Protocol. The percentage of women in Parliament is 56 per cent and beginning the year 2012/13, Gender Responsive Budgeting was made mandatory at all levels of governance. Law No. 59/2008 criminalises imposition of punishments involving gender violence. Institutions for fighting gender-based violence include: The Rwanda National Police, which has a Gender Desk to handle any human rights abuses; Gender-Based Violence Committees at community level and support for CSOs aimed at eradicating gender-based violence. Access to justice for all is promoted by the Constitution and the Office of the Ombudsman and the National Commission for Human Rights are

responsible for investigating and handling complaints on the breach of humanrights. Legal aid is provided at district level and legal aid weeks are organised every year at district level.

Malawi's 1995 Constitution (Section 13(a)) provides for gender equality between women and men in all spheres of life. Section 23 outlaws any form of discrimination and provides for equal rights during and after dissolution of marriage; it also makes unconstitutional any law that permits the discrimination of women on grounds of gender or marital status. The Prevention of Domestic Violence Act, 2006, the Deceased Estates (Wills, Inheritance and Protection) Act (2011) and the Gender Equality Act (2013) have been passed to protect women's rights in accordance with the provisions of the Charter.

Malawi's institutional mechanisms for promoting women's rights remain some of the weakest among the case study countries. The country's National Gender Policy (2000- 2005) defined the National Gender Machinery (NGM) in Malawi as the Department of Gender Affairs in the ministry responsible for Gender; and it is headed by a director. The positioning of the NGM in a line ministry has fundamentally compromised its clout and influence on central government policies, strategies and programmes. As a result, gender issues have not been taken seriously at central government level and by senior and high level policymakers. This is clearly reflected in the Malawi Growth and Development Strategies (MGDS I & II) which, as the main government development documents, have failed to adequately mainstream gender in all its priority areas, although gender is included as a stand-alone section.

The Republic of **Mozambique** attaches great importance to the issues of gender equality and advancement of women. The Mozambican government's policies and strategies are founded on the national Constitution, in the principles of equal rights for all, men and women, and of gender equality. In 2004, Mozambique passed the Family Code, providing for equal rights for men and women in all matters relating to marriage with consent; rights to equal treatment in divorce procedures; equal access to children during divorce, and equal share of family or matrimonial property in the case of divorce. The Code also prohibits any form of discrimination and establishes a legal age of marriage.

Mozambique has also promoted the creation of institutional mechanisms, policies, and strategies that promote the advancement of women in all spheres of economic and social life of the country while also adhering to many international instruments on women and development⁴³. These mechanisms include the following institutions: Ministry of Women and Social Action; National Council for Advancement of Women; Women Forum, a network of over 50 members of government institutions, trade unions, political parties, donor agencies and other entities committed to gender equality and advancement of women; Commission on Gender and Social and Environmental Affairs; Bureau of Women Members of Parliament; and the Network of Women in Government and Parliament.

On the whole, in spite of the legislative framework and the limited number of institutions established to protect and promote women's rights, Mozambique has not yet developed a universal approach to these rights. As a result, what is provided for under statutory law is easily clawed back by customary law and the culture of patriarchy and disrespect for the female gender⁴⁴.

Nigeria ratified the Protocol in December 2003. It has built gender equality and the principle of non-discrimination into several policies of a general nature, such as the National Health Policy, the National Population Policy, the National Food and Nutrition Policy, and the Social Development Policy. However, most of these policies are mere guidelines and do not contain penalties or sanctions for non-compliance.

There is a dual system of law in Nigeria: The Criminal Code governs Southern Nigeria

while the Penal Code applies to Northern Nigeria. In cases of rape, for instance, the standard of proof is not the same under the two laws. Prosecution for rape is very difficult in Nigeria⁴⁵.

Nigeria has not generated the changes required to fully comply with the Protocol. Equal access to justice is impeded by constitutional provisions that do not allow non-Nigerian male spouses to acquire nationality by marriage (section 26(2); section 55 of the Penal Code applicable in Northern Nigeria permits a husband to beat his wife as punishment; section 55 of the Labour Act prevents women from working at night; and some cultural practices do not allow women to be heard unless their lives are really threatened. A process of legal reforms to reverse these practices started in 2008 but has not yet generated the changes required for Nigeria to fully comply with the Protocol's provisions.

In **South Africa**, the Constitution (Section 9) prohibits any form of discrimination. Section 187 established the Commission for Gender Equality, which receives and acts on complaints related to abuse of provisions of any law relating to gender equality. The Commission is governed by the Commission for Gender Equality Act, No. 39 of 1996. The General Law Fourth Amendment Act, No. 132 of 1993, abolished all apartheid laws that institutionalised discrimination. In order to limit the negative impact of cultural values and practices, the National Traditional Affairs Bill of 2011 has been tabled. It recognises the role of traditional authorities, provided that they exercise their functions within the Constitution. The Promotion of Equality and Prevention of Unfair Discrimination Act of 2000 prevents unfair treatment based on sex, gender and pregnancy. It gives the right of choice to terminate pregnancy and provides for justifiable abortion. The Criminal Law (Sexual Offences and Related Matters) Act of 2007 defines and prescribes penalties for sexual offences. The Domestic Violence Act (No. 116) of 1998 outlaws domestic violence. The Employment Equity Act (No. 55) of 1998 and the Basic Conditions of Employment Act (No. 15) of 1997 prescribes labour rights of all and special rights of women at work. The Recognition of Customary Marriages Act No. 120) of 1998 recognises the rights of women in customary law marriage and the Maintenance Act (No. 99) of 1998 provides for the rights of women in the process of dissolution of marriage. The Protection from Harassment Act (No. 17) of 2011 makes provision against all forms of sexual harassment in private and public areas and the Prevention and Combating of Trafficking in Persons Act, (Act 7 of 2013) outlaws any forms of human trafficking. While these achievements are impressive, South Africa has still not submitted annual reports on its status of compliance with the Protocol. According to Julie Middleton, South Africa last submitted a report on its compliance in 2005⁴⁶. She also notes that only 46 per cent of South Africans are aware of the Constitutional Bill of Rights: This implies that many South African citizens may be unaware of these protective laws. The South African Compliance Report has also pointed out that 'deplorable living conditions, poor service delivery, abject poverty and endemic unemployment of women' are major obstacles to the successful and effective enforcement of the constitutional and other legislative provisions seeking to promote women's rights⁴⁷.

Gender-based discrimination

Gender discrimination is the systematic, unfavourable treatment of individuals on the basis of their gender, denying them rights, opportunities or resources⁴⁸. Across the world, women are treated unequally and less value is placed on their lives because of their gender. In Africa, women's differential access to power and control of resources is central to this discrimination in all institutional spheres, i.e. the household, community, market, and state. Within the household, women and girls can face discrimination in the sharing out of household resources including food, sometimes leading to higher malnutrition and mortality indicators for women (see Intra-household Resource Distribution). At its most extreme, gender discrimination can lead to son preference, expressed in sex selective abortion or female feticide⁴⁹. In the labour market, unequal pay, occupational exclusion or segregation into low skill and low paid work limit women's earnings in comparison to those of men of

similar education levels. Their lack of representation and voice in decision making bodies in the community and the state perpetuates discrimination, in terms of access to public services, such as schooling and healthcare, or discriminatory laws. The law is assumed to be gender-neutral when in fact it may perpetuate gender discrimination, being a product of a culture rooted in oppressive gender ideologies.

In some cases, even where constitutional or national legal provisions uphold gender equality principles, religious or other customary laws that privilege men still take precedence in practice. However, the law, when reformed with women's input, can be a potent tool for challenging discrimination, if combined with other strategies, including capacity-building to overcome barriers to claiming rights. The Convention on the Elimination of all forms of Discrimination against Women (CEDAW), adopted in 1979, brought into international focus the rights of women as human rights, including the right to be free from discrimination. This is further amplified by the AU's Maputo Protocol. Women activists regard these instruments as key tools to support their struggle against discrimination in all spheres, pushing governments towards attaining these internationally recognised minimum standards.

In spite of AU's commendable advances in formulating the Protocol, ingrained social norms that promote discrimination against women still persist. Women still remain marginalised in most countries.

In **Cameroon**, discrimination though illegal under Article 2 of the Constitution, is still common. Widows who fail to perform rituals of widowhood are still stigmatised as having been responsible for their husband's death⁵⁰, while there are no rituals for widowers. The Report of the Government on Cameroon on CEDAW, 2007, confirms this as a general trend and attributes it to negative attitudes in society.

While the Civil Code of Cameroon (Article 140, 1421 and 1428) grants equal rights to land irrespective of gender, customary law still applies in rural and sub-rural areas, allowing discrimination. As a result, very few women in Cameroon own land, especially in rural areas. Indigenous women face racial and gender discrimination and their rights are not protected⁵¹. Transfer of land, under the Civil Status Registration Ordinance, is restricted for women. Therefore, women do not have equal rights to use or sell their landed property: Husbands possess the statutory right to administer communal property and sell matrimonial property without the consent of their spouses. Husbands also have rights to mortgage their wives' property under the Civil Code (Articles 1420 and 1421). Access to loans is limited since women have no property or property rights. According to the OECD, only 10 per cent of the women in Cameroon have accounts in formal financial institutions. Even in micro finance institutions where females are active, only 36.67 per cent of the borrowers in 2011 were women⁵².

The Constitution of Cameroon recognises the right to work but a law introduced in 1981 allows husbands to restrict their wives from working in order for them to attend to children and household responsibilities⁵³. Maternity leave is provided for in the Family Allowance Code. The right to health is not specifically provided for in the Constitution but social values shared by most communities tend to stigmatise contraception and other sexual and reproductive health practices. However, the USAid Report⁵⁴ has indicated that the government works with NGOs on programmes aimed at educating the public on sexual and reproductive health rights. In 2007, the Ministry of Health reported that 12 women were dying every day in childbirth and maternal mortality was 669 per 100,000 births. It also reports that in rural areas, prenatal care, skilled attendance during childbirth and postpartum care were very limited⁵⁵.

Under the Family Code of Cameroon, the legal age of marriage is 18 years and parental authority is to be shared equally between parents for consent to be obtained. But custom and

practices hold that the father is the head of the family and has the final decision in the family home. Under the Civil Code, both men and women have equal rights to initiate divorce (Article 229-230) but in the case of adultery, the burden of proof is lighter for men than women⁵⁶. Gender discrimination is prohibited in **Ghana** by the Constitution and other laws. In spite of the constitutional guarantee for gender equality and the mandate of the Law Reform Commission, Ghana needs to redress gender imbalances in certain laws.

First it has to adjust customary law to make it gender and development compatible in all areas where it conflicts with international commitments. Second, the Ghana Constitution of 1992 provides that any law that is contrary to international conventions should be amended and the Protocol on the Rights of Women calls for the repeal of laws 'contrary to its provisions'. Therefore, the Law Reform Commission needs to reconsider reversing the repeal of Article 42(9) of the Criminal Code, which prohibited marital rape. The section was repealed for being unconstitutional but the repeal itself was unconstitutional because marital rape is not expressly allowed by the Constitution and therefore any law criminalising it cannot be 'unconstitutional'. But any law allowing a violation of human rights is a violation of the Ghana Constitution. Third, there is need to establish mechanisms for the full implementation of the Constitution. In this vein, Article 22(3) providing for the equal rights of spouses to equal share of matrimonial property in the case of dissolution of marriage needs to be backed by legislation.

Equal access to justice is guaranteed under Articles 17 and 22 of the Constitution as well as the Domestic Violence Act and the Interstate Succession Act of Ghana. But due to poverty especially in rural areas, women still have unequal access to justice⁵⁷.

The right to education and training opportunities in Ghana has been promoted through the Free, Compulsory Universal and Basic Education (FCUBE) policy, the 2003 Education Strategic Plan (2003-2015) and the Gender Education Strategic Plan (2010-2020) of Ghana, all of which are aimed at improving gender equity, equality and parity. Between 2010 and 2013, the gross enrolment and completion rates in Ghana were highest for girls at kindergarten and primary school level but not so high at secondary school level. Similar trends were repeated for gender parity⁵⁸.

Although the Children Act of 1998 of Ghana fixes the minimum age of marriage at 18, the same law allows girls between the ages of 16 and 18 to get married with parental consent. This is a departure from the minimum age requirement⁵⁹. Child marriages continue in spite of section 14 of the Children Act due to ineffective provisions and reluctance to enforce them. Most of the women married before the age of majority are from very poor communities, illiterate or with only basic education⁶⁰.

In **Kenya**, Article 12 of the 2010 Constitution bestows equal rights, privileges and benefits of citizenship to all citizens. Chapter 4 provides for a Bill of Rights with guarantees of freedoms for all. Article 25 provides for rights that cannot be removed even by constitutional amendment which include freedom from torture and cruel and degrading treatment or punishment; and freedom from slavery or servitude, among others. Article 27 provides for equality without discrimination, and Article 27(3) provides that women and men have the right to equal treatment and the right to equal opportunities in political, economic and cultural spheres. Discrimination on grounds of pregnancy or marital status is unlawful under Articles 27 (4) and (5), and Article 27(6) provides for an obligation on the part of the state to take legislative and other measures - including affirmative action - to redress past acts and policies that may have led to the discrimination of certain groups. Article 28 guarantees the right to dignity. The right to be free from slavery or servitude is provided for in Article 30

opposite sex based on free consent, and Article 45(3) provides for equal rights during and at the dissolution of marriage. Traditional and religious marriage is recognised, provided the laws governing it are consistent with the Constitution (Article 45(4)). The right to equal access to justice is enshrined in Article 48. To enforce these and other rights, the Constitution of Kenya provides for the establishment of an institutional mechanism, the Kenya National Human Rights and Equality Commission, which has power to monitor, investigate and report on observance of these rights 'in all spheres' (Article 59).

The Marriage Act of 2008 (Cap 150) Section 11(1) of Kenya provides for the minimum age of marriage as 18 years or 'under that age' if there's consent, though the provision for consent violates the letter and spirit of the Protocol: The presumption behind the requirement for the age of majority at 18 is that there's a probability that people below that age cannot consent freely.

The right to education is enshrined in Article 53(1) (b) of the Constitution of Kenya, which provides for the right to free and compulsory education for every child. But in Kenya, like in many other African countries, marginalised and conflict and disaster-prone areas do not get equal access to education and disparities between urban and rural schools remain an obstacle to equal access. The Education for All Report, 2013-14, also pointed out that Kenya had 1,010,000 children out of school in 2011, and was among 10 countries with the highest out-of-school populations globally .

Kenya was also listed among 14 countries likely to have more than one million children out of school by the end of 2015. However, the country was listed among 126 countries that have reached the 95 per cent gender parity target of Education for All even though teacher-pupil ratios were declining: 62 This was 40:1 in 1999 and had risen by 45 per cent to 47:1 in 2009. However, the number of textbooks available in primary schools has stagnated. 63

For Kenya, if equal access to education has to make a contribution to child development and prospects for future productive work, gender parity has to be increased; gender equality has to be part of the inclusive development strategies and the quality of teaching and learning has to be increased through lower student-teacher ratios, quality education for teachers and a gender balance in the number of teachers.

In **Rwanda**, as already indicated, the Constitution (Article II) provides for equality for all and all previous laws that had discriminatory provisions were amended to comply with it. Law No. 42 of 1998 sets the age of marriage at 21 and prohibits forced marriage. There is, however, a Bill in Parliament which seeks to lower the age of marriage to 18: This has attracted strong criticism from civil society. As regards the right to education, the net enrolment in primary education in Rwanda was at 93.5 per cent in 2005, the highest in Africa. This went up to 95.9 per cent in 2011. Secondary school enrolment shot up from 9 per cent in 2005 to 25.7 per cent in 2011. In higher education, the number has risen from 62,734 in 2010 to 73,674 in 2011.

In all cases, however, the number of females still remained lower by about 30 per cent, compared to that of male students. Overall, Rwanda has closed the gender gap in many sectors in 10 years (2004-2014). Its record on gender equality is above the African average and the country currently leads other African countries on women's rights.

For **Malawi**, although the law does not expressly permit inequality between men and women, levels of literacy in rural areas, the predominance of negative cultural beliefs and practices about gender relations combine to keep women in a subordinate position at the household level and low, unpaid or underpaid jobs at community level without equal access to justice. Some of the negative cultural practices

include polygamy, polyandry, wife inheritance, replacement of a deceased wife by some unwilling young relative, legalisation of marriage by abduction; forced marriage following pregnancy (*ukwati*); marriage by proxy in which brothers of an absentee husband take over rights and responsibilities of their absentee brother; wife swapping, which is arranged between men to exchange wives for short periods to strengthen their friendship; child pawning, which occurs when indebted parents give a daughter in settlement of debts; and bonus wife where a husband is given a younger sister or niece of his wife as a second wife⁶⁴. All these practices, common in Malawi, need to be abolished if the provisions of the Protocol on protecting the rights and dignity of women are to be fully implemented.

The Constitution and laws of Malawi are also permissive when it comes to marriage below the age of majority. The Constitution only provides that no one shall be forced to marry. The Child Care, Protection and Justice Act of 2010 also prohibits forced marriage; but these laws do not require consent by girls being married below the age of consent. Recognition of customary law legalises child marriages. The key contradiction is that while the Penal Code makes it an offence to have carnal knowledge of a woman below the age of 16 years, the Constitution allows marriage of girls of 15 years if the parents consent. In fact, persons charged with offences under the Penal Code have been acquitted under the provisions of the Constitution⁶⁵. The government of Malawi has so far not acted on the Marriage, Divorce and Family Relations Bill tabled in 2006, which sought to protect children against forced marriage, and to raise the minimum age of marriage to 18. The government has rejected calls by the CEDAW committee to raise the minimum age of marriage⁶⁶.

Mozambique passed the Family Code providing for equal rights for men and women in all matters relating to marriage with consent; rights to equal treatment in divorce procedures; equal access to children during divorce and equal share of family or matrimonial property in the case of divorce. The code also prohibits any form of discrimination and establishes a legal age of marriage. Mozambique is ranked sixth among 30 countries with the highest rate of child marriages. It follows.

Niger, Chad, Central African Republic, Guinea and Mali with an estimated 1,404,520 girls under 18 years lured into marriage in 2012.⁶⁷ Lack of awareness of laws accounts for the high prevalence of child marriages, especially in rural areas. Rites of passage performed at very early ages and perceived to be preparing young people for marriage is a major contributor to this. Up to 36.9 per cent of girls who married before attaining the age of majority are illiterate, and polygamous marriages involve about 30 per cent of Mozambican women.⁶⁸

Mozambique also experiences gender gaps with regard to the right to education and training, which limit the capacity of women to participate in economic, political and advocacy activities, thus keeping women in traditional skills and chores. Literacy rates for women and men have been characterised by increasing gaps between 2003 when the percentage of semi-literate women was 41 per cent against 56 per cent for men but were 53 per cent for women and 70.1 per cent for men in 2010.

Nigeria has built gender equality and the principle of non-discrimination into several policies such as the National Health Policy, the National Population Policy, the National Food and Nutrition Policy and the Social Development Policy. However, most of these policies are mere guidelines and do not contain penalties or sanctions for non-compliance. Rape, women trafficking and indecent assaults are criminalised under the Penal Code. At the federal government level, there was no national law on Violence Against Women in 2014; although four out of the 36 states have a domestic violence prohibition law or a Gender-based violence prohibition law.

Literacy among females within the age bracket of 15 to 24 in Nigeria is at 66 per cent compared to 74 per cent for men. Enrolment has been rising for boys and girls but completion rates for girls are still as low as 30 per cent in the north, and even 7.8 per cent in some of the northern states.

The right to inheritance is governed by customary law in most if not all rural areas of Nigeria, and as such, first born males have an automatic right of inheritance to the exclusion of all other siblings. Although the Court of Appeal ruled against this practice as being unconstitutional in the case of *Mojekwu v Mojekwu*,⁶⁹ court rulings - unless used to change statutory law - apply only in court cases where they are cited as precedents. Rural people rarely escalate issues to the higher courts and the administrations in local areas may not take notice of such a case. The Child Rights Act, 2003, of Nigeria fixes the minimum age of marriage at 18 years. However, the law has only been domesticated by 28 of the 36 states. Due to Nigeria's prevalent legal pluralism, the age of marriage in the northern states ranges from 12 to 15 years while in the southern states, it is between 18 and 21 years.

The state of gender violence

Gender violence is any act or threat by men or male-dominated institutions that inflicts physical, sexual, or psychological harm on a woman or girl because of their gender⁷⁰. It constitutes the acts or threats of rape, sexual harassment, wife-battering, sexual abuse of girls, dowry-related violence, and non-spousal violence within the home. This definition may also extend to marital rape, acts such as female genital female infanticide, and sex-selective abortion. Certain definitions of gender violence include 'sexual exploitation' such as enforced prostitution, trafficking of women and girls, and pornography. Violence against women is now a human rights issue with major health and economic implications recognised by international law - including AU instruments. However, legislation alone is insufficient to address this problem. The prevention and elimination of violence against women is hampered by pervasive attitudes that devalue women's lives and by institutional resistance, including from the judicial system and the police, to recognising the extent of the problem. There is a general hostility to interfering with 'private' domestic disputes.

So far, 36 AU member states have ratified the Protocol on Women's Rights, making a commitment to stop and prevent gender violence in Africa. Some countries have enacted appropriate legislation to conform to the Protocol's provisions, but implementation and enforcement is still weak.

In **Cameroon**, the Constitution affirms respect for the integrity of all persons. However, domestic violence is still treated as a private matter. Some judges have indicated that domestic violence, if not leading to grievous harm, is an expression of the husband's right to discipline his wife. Rape is a criminal offence; but there is no provision against marital or spousal rape in the Penal Code. Similarly, although the Constitution affirms the right of women to dignified treatment and protection of their integrity, there is no provision in the Penal Code for protection against sexual harassment. Female genital mutilation is still commonly practised in some communities in Cameroon. The 2004 Demographic Health Survey reported that 14 per cent of women aged 15 to 49 years experienced female genital mutilation. Abortion is illegal under the Penal Code and no exceptions are allowed, including abortion following rape or similar circumstances.

For **Ghana**, in spite of the existence of the Domestic Violence Act of 2007, which outlaws all forms of violence against women, the Ghana Compliance Report indicates that cases of reported domestic violence increased from 5,709 in 2009 to 15,495 in 2012, i.e. it tripled over three years. This indicates the ineffectiveness of mechanisms established under the law. Failure to educate communities on the criminal aspects of violence against spouses contributes to this ineffectiveness. The offence of rape is provided for under

Ghana's criminal code. But the number of prosecuted rape cases has been on the rise in spite of awareness campaigns organised by state institutions and CSOs; the existence of the Domestic Violence and Victims Support; and the training of police officers by the police on how to support victims. There is also apparent lack of political will by the State to allocate adequate financial and logistical resources to law enforcement bodies established to enforce laws protecting the dignity of women. Female genital mutilation has persisted in spite of considerable success in reducing it in various communities. The 2007 Criminal Code (Amendment) Act of Ghana has been successfully implemented in urban areas, though this has neither been fully enforced nor popularised through civic education in several rural areas.

In other places where awareness exists, mutilation is practised in neighbouring countries where the laws are either nonexistent or ineffective. Therefore, cross-border surveillance and reporting mechanisms need to be provided for.

In **Kenya**, customary laws and negative attitudes still take precedence in some areas in spite of comprehensive constitutional provisions and laws: These customary laws endow husbands with the right to beat their wives in case they act without their permission or below expectations. These attitudes are held by men and women alike.⁷⁶ Female genital mutilation (FGM) still thrives in some parts of Kenya due to cultural beliefs that an un-mutilated woman is not worthy of being a wife or mother; women in those areas also accept the practice as a necessary rite of passage to wifedom or motherhood.

The anti-FGM law, passed in 2011, is beginning to bear fruit through awareness campaigns as well as the threat of prosecution. But like in many other countries in the region, in the absence of popular consultations (between clans, government, civil society, private sector, and other critical stakeholders) and the lack of open discussion of the demerits of the practice, compounded by failure to address the cultural beliefs promoting it, legislation alone has been insufficient to end FGM. Inadequate allocation of funds to institutions dealing with FGM, especially the newly created Anti-FGM Board, may also continue to limit law enforcement as well as awareness creation. Similarly, while the Children Act outlaws child female circumcision, early marriage or other cruel acts against their dignity, it does not provide for sanctions for such offences, thereby rendering it ineffective.

In **Malawi**, the Gender Equality Act, 2012, prohibits negative cultural practices that infringe on the rights of women as well as sexual harassment and other acts or omissions that violate women's dignity and rights. Victim Support Centres have been established at 34 police stations. In spite of the institutional mechanisms established and occasional cases brought to court, cultural practices such as polygamy, wife inheritance, rites of passage and female genital mutilation reduce the impact of these protective and preventive measures.

The Africa for Women's Rights in Mozambique has noted persistent violence against women despite the existence of the domestic violence unit. This situation is exacerbated by the widespread belief that the man as a head of the family can use force to solve domestic problems⁷⁷. Access to health in Mozambique has been affected by the destruction of most healthcare centres during the civil war. But decades after the end of the civil war, Mozambique is ranked 19th out of 52 countries in Africa, most affected by maternal mortality - with 490 deaths per 100,000 births; 0.3 doctors per 10,000, 16.5 per cent contraceptive prevalence and only 55 per cent births attended by skilled health personnel⁷⁸.

FGM and rituals of widowhood are still common in Nigeria and undermine the dignity of women. The constitutional provisions on the right to dignity are of general application and

do not contain sanctions or penalties. The law prohibiting FGM has only been domesticated by six states. In the absence of express laws such as the Violence Against Women Act of Nigeria, violations of women's dignity are committed with impunity.

In Rwanda, domestic violence is treated as a confidential matter. Due to lack of rights awareness, many Rwandese women do not institute legal action against gender violence. FGM is not practised in Rwanda but Law No. 1 of 2012 prohibits all sorts of harmful practices such as breast ironing, preference for boys and female infanticide, as well as virginity testing, honour crimes, bonded labour, forced feeding, accusation of witchcraft, matrimonial taboos, sexual slavery and acid attacks. Enforcement of this law is hampered by the assumed inferiority of women and cultural practices that encourage the subordination of women. According to Middleton, harmful practices such as virginity testing, marriage through abduction and forced marriage of young girls to older men still persist in South Africa, especially in KwaZulu Natal . In a recent case of *Luthuli v The State* , the Supreme Court overturned a conviction on the offence of rape which had been based on evidence arising from a virginity test. This is not to mention the scourge of rape and gang rapes that has tarnished South Africa's image in recent years. Lesbians have been particularly targeted by perpetrators of serious sexual offences . Women refugees are also unprotected in spite of the ratification of the OAU Refuges Convention.

The status of women's participation in public life

Throughout Africa, the power relations that shape social, political, economic and cultural life prevent women from participating fully in all areas of their lives, including in the public arena. While women's dedicated efforts to challenge the status quo have allowed more of their number to reach positions of power in recent years, they continue to be under-represented in all areas of decision-making, such as religion, the media, culture and the law. Women also face significant barriers to their full and equal participation in the structures and institutions that govern their lives, namely public offices.

The Maputo Protocol aims to bridge this gap by affirming the principle of equal participation and the use of affirmative action to ensure equal and effective participation of women in politics.

Generally, women's participation in public decision-making is one of the areas in which progress has been made in Africa. There is modest progress in women's representation in the executive branch. Liberian President Ellen Johnson-Sirleaf became the first woman Head of State in modern Africa when she assumed power in 2003 and Dr Nkosazana Dlamini Zuma became the first AU Commission Chairperson in 2012. Further, the number of women ministers has increased in countries such as South Africa (44.8%), Cape Verde (35.7%) and Lesotho (31.6%). Representation of women remains quite low in the private sector, however. The average representation rates of women in parliament, ministerial positions and senior management posts in private firms are approximately 16 per cent, 19 per cent and 7.3 per cent respectively in sub-Saharan African countries (SSA).

Rwanda has become a shining example for women participation among AU member states by achieving gender parity, interpreted as the 50 per cent goal set by the AU Solemn Declaration on Gender Equality⁸². At 56 per cent women representation in parliament exceeding the 30 per cent target, Rwanda is also a global leader in this regard. For this achievement, the President of Rwanda has received several awards. Up to 54.5 per cent of Rwanda's public servants are men and 45.5 per cent are women. Women occupy 40 per cent of the permanent secretary positions and Supreme Court judgeships. Six other **Rwanda** has become a shining example for women participation among AU member states by achieving gender parity, interpreted as the 50 per cent goal set by the AU Solemn Declaration on Gender Equality⁸². At 56 per cent women representation in

parliament - exceeding the 30 per cent target, Rwanda is also a global leader in this regard. For this achievement, the President of Rwanda has received several awards. Up to 54.5 per cent of Rwanda's public servants are men and 45.5 per cent are women. Women occupy 40 per cent of the permanent secretary positions and Supreme Court judgeships. Six other African countries have achieved 30 per cent women's representation, usually interpreted as fulfilling the "critical mass" threshold set by the Beijing Declaration and Platform of Action (BDPA). These countries include South Africa (45%), Angola (37.3%), Mozambique (34.8%), Uganda (30.7%), Burundi (30.5%), and the United Republic of Tanzania (30.4%).

In 2008, South Africa witnessed a 12 per cent increase in women's representation in parliament, from 33 per cent to 45 per cent, during the April 2009 elections. **South Africa** is on track to achieve the 50 per cent target set for 2015 according to the 2008 SADC Declaration. Decision making women occupy 41 per cent of the cabinet posts, 47 per cent of Deputy Minister positions, 44 per cent of seats in Parliament and 30 per cent of representation at local level thus coming very close to the 50:50 gender parity⁸³. Countries with over 20 per cent women's representation include Eritrea, Ethiopia, Lesotho, Mauritania, Namibia, Seychelles, Senegal and Tunisia.

Countries that have made progress have either instituted affirmative action quotas in their constitutions or adopted rules to enforce gender quotas in their dominant parties. For instance, in Burundi, Rwanda, Tanzania and Uganda, constitutional provisions established quotas to ensure women's representation mostly within the range of 30 per cent. In South Africa, the Municipal Structure Act established a 50 per cent quota for local government while the African National Congress (ANC) established a 30 per cent quota at the level of the national Parliament.

Similarly, in **Mozambique**, the Front for the Liberation of Mozambique adopted a 30 per cent quota for women. As a result, the percentage of women government ministers increased from 25.9 per cent in 2010 to 28.5 per cent in 2011 while 27.2 per cent of the provincial governors are women⁸⁴. The Mozambican Constitution also guarantees citizens equal rights of participation in decision-making processes and, as mentioned earlier, 87 out of 250 Members of Parliament elected in 2004 were women.

Participation of women in Parliament of **Kenya**, as provided for under Article 97(b), requires 47 elected seats in the National Assembly to be reserved for women and Article 98 which requires 18 of the Senate members nominated by political parties to be female. Other institutions established under the Constitution charged with ensuring equality for all include the Public Service Commission, which is required by Article 232 to afford adequate and equal opportunities for appointment, training and enhancement to among others, men and women; the Salaries and Remuneration

Commission and other bodies established under Article 248, all of which are required to uphold the provisions of the Constitution - especially principles of human dignity, equity, social justice, inclusiveness, equality, human rights, non-discrimination and protection of the marginalised. (Article 10). The right to participate in political and other decision making arenas has been actualised through the increased number of seats under Article 297 of the Constitution.

Though these trends should be lauded, representation of women remains quite low in the private sector. The average representation rates of women in Parliament, ministerial positions and senior management positions in private firms is approximately 16 per cent, 19 per cent and 7.3 per cent, respectively in sub-Saharan African countries. While Rwanda has registered impressive results, 90 per cent of its district mayors are men and 83.3 per cent

of Vice Mayors are men.⁸⁵ Yes, there is gender equality in terms of numbers of employees in primary education institutions (in schools and administration) but in higher education institutions; men occupy 70 per cent of the positions. While in the judiciary gender parity is better at the level of the Supreme Court and the High Commercial Court, with 43 per cent of the judges being female, in the High Court only 25 per cent of the judges are female. At the level of Directors General in the public service, the percentage of women is 15.7 per cent. At the grassroots level of administration, women occupy only 9.1 per cent of the positions of Executive Secretaries. Because it is at that level that most women's rights are violated and most women are unaware of their rights, a higher proportion of females would improve women's access to justice. Mozambique also needs to strengthen women's participation in other spheres of public life: There are 3 female judges out of the 14 in the Supreme Court and only five out of the 25 High Court judges.

While the Constitution of **Cameroon** provides for civil and political rights, including the right to participate in political life, stereotypes against women still persist in many rural and urban communities. In the government CEDAW Report of 2007, it was claimed that in Cameroon, there is a widely held view that women lack abilities to participate in politics⁸⁶.

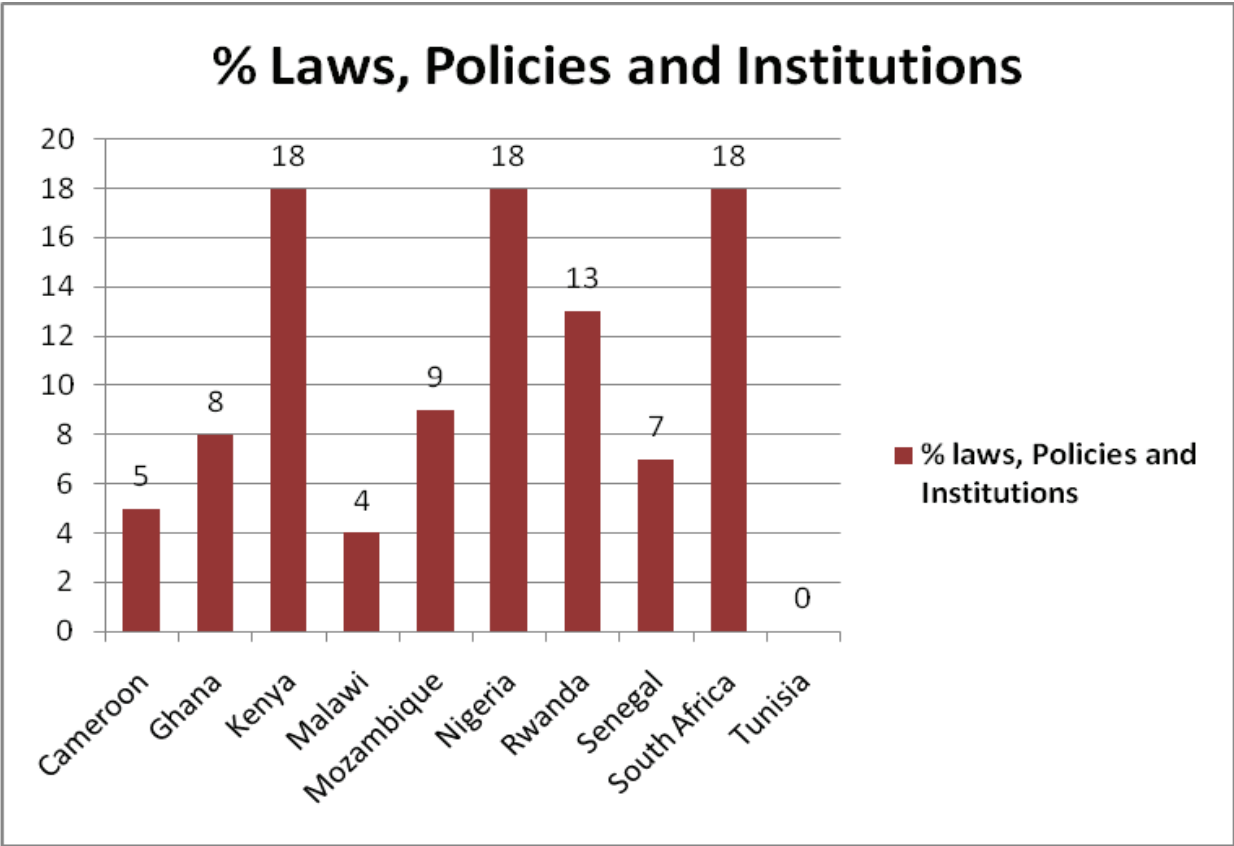
In **Ghana**, a key factor hindering equal participation of women in decision making at various levels is the prevalence of negative cultural practices aggravated by lack of political will on the part of the government to involve more women in political leadership and decision making in the public sector. The percentage of women elected to parliament has fluctuated between eight and 10 over the 10-year period starting 2004. Political parties routinely ask for high fees for these women to contest for leadership positions. Although in 2012 some parties revised their fees downwards by 50 per cent for women interested in running for presidency, the rate was still very high for women aspiring for parliamentary seats.

Nigeria has no preferential seats for women to participate in politics. As a result, there are only eight women in the 109 members' Senate and only 23 in the 360-members' National Assembly. Women constituted 31 per cent of the cabinet by the end of 2014. But, as in Kenya, mere numbers are not enough to change the nature of politics in Africa. The political culture needs to change first, and this can only come if the top leadership in political parties and government adopt more inclusive approaches in exercising power and managing resources.

resources. In spite of South Africa's impressive trends, rights awareness among law enforcement officers, especially the police, needs to improve and women's participation in the force needs strengthening: This affects enforcement of laws against domestic violence, sexual harassment and inhumane treatment.

Countries' compliance with the Protocol to the African Charter on Human and Peoples Rights on the Rights of Women in Africa

Figure 10: Percentage of Laws, Policies and Institutions Established to Protect the Rights of Women the force needs strengthening:



Low	# of Laws, Policies and Institutions Established to Implement the African Charter on Democracy, Elections and Governance						High
Cameroon	Kenya	Malawi	Nigeria	Rwanda	Mozambique	Ghana	S. Africa



Chapter 4:

Rights and Welfare of the Child, and the Youth



Instruments under review:

The African Charter on the Rights and Welfare of the Child
The African Youth Charter

Indicators:

Laws recognizing children born out of wedlock; Youth engagement by governments; Youth participation in decision making; Gross enrolment of children; Infant mortality of children under five; Immunization of children; Children working on farms and in mining areas; Number of children out of school; Maternal, Newborn and Child Health; Rate of adolescent fertility; Mother-to-child transmission of HIV for children under 15 years of age; Access to secondary school education; Measures taken to prohibit child marriages; Prevalence of HIV among girls; Measures taken to enable youth to organize freely, participate in decision making at all levels, understand, promote and defend democracy and human rights; Creation of conditions under which youth will acquire a culture of tolerance, dialogue, peace and mutual respect; Measures taken to enable rural youth to acquire production capacity and assets to make it possible for them to produce and participate in local, national and international markets; Measures taken to develop the capacity of the youth to participate in all sectors of the economy; Imbalances in access to education opportunities for rural and urban youth on the one hand

and female and male youth on the other; Counseling on reproductive health and to acquire the necessary information to enable them live healthy lives; Measures taken to enable youth to mobilize themselves in the campaigns against HIV/Aids; Concrete measures taken to provide mechanisms for integrating youth with social problems and to protect them from becoming more vulnerable; Measures taken to outlaw the recruitment of child soldiers or their engagement in combat activities; Measures taken to educate the youth on environmental management, increase their role and participation in community programmes for natural resources management and preservation; Measures taken to increase the role of the youth in eradicating harmful practices and preserving the positive ones; Measures taken to enable the youth to apply tools for understanding and achieving gender equality; Measures taken to ensure basic freedoms to political, social and economic rights of the youth including the right to get access to education and health services and rights to a happy and healthy childhood; Measures taken to solve the problem of youth unemployment; The level of consultation between the government and the youth; Measures taken to mainstream policies on youth throughout all government agencies; Measures taken to link government and CSOs and the private sector on youth development initiatives.

Introduction

Chapters 2 and 3 discussed the rights of the child and the rights of the youth: In Chapter 2 the rights of women, youth and children were illuminated through the lens of the rights to equality, participation and economic governance; while Chapter 3 investigated the rights of the girl child and young women as captured in the Maputo Protocol. This chapter focuses on the social and economic rights of children and youth, and also examines the implementation of the African Youth Charter. The African Charter on the Rights and Welfare of the Child defines a child as person below the age of 18 years. The charter provides for children to enjoy rights and freedoms without discrimination and guarantees all children the right to life, nationality, education, privacy, health, leisure, recreation and culture. It guarantees the children's freedom of speech, expression, association, thought, conscience and religion, and contains special provisions requiring measures to be taken by member states to protect physically and mentally handicapped children. This charter also requires state parties to protect children against child labour, child abuse and torture; and for juvenile offenders, it requires special measures to be taken in the administration of justice.

The African Youth Charter, on the other hand, defines youth as people between the age of 15 and 35 years. It provides for non-discrimination, freedom of movement, expression, thought, association, conscience, religion and privacy. It provides for the right to marriage, ownership of property, participation in all spheres of society and calls upon member states to develop national youth policies. It also provides for the right to education and skills development, the integration of youth in development activities and their empowerment and the right to healthcare. These charters focus mainly on civil, political, economic and social rights.

Non-discrimination

Progress has been made in various countries with regard to establishing laws that protect children from discrimination: The Ghanaian and Malawian governments have, for instance, passed laws recognising children born out of wedlock and giving them equal rights of inheritance and protection. Such progress is, however, still marred by various challenges. In Ghana, the influence of cultural practices and ignorance of the laws - espe-

cially in rural areas - limits enforcement of progressive laws that protect children, while Malawi has no robust laws protecting the rights of children with physical disability, refugees and orphans. Malawi's Ministry of Gender, Children and Social Welfare has a small number of staff and is not adequately resourced to meet its responsibilities.

Social and economic rights

Free Education Programmes

Africa has generally made progress in ensuring basic social and economic rights for children. Malawi, Ghana, Kenya, and Mozambique have, for instance, entrenched provision of free and compulsory education for all children in their constitutions. Other countries, like Mozambique, have gone steps ahead to establish Education Endowment funds to support brilliant secondary school children from poor families. The government of Rwanda has since 2010 introduced six years of free basic education and six years of free post-primary education, while South Africa has established earmarked 'no fee' schools and gives fee waiver to parents from disadvantaged communities. These measures have resulted in a substantial increase in gross enrolment of children in primary education institutions. Other countries, however, face challenges in this respect. Nigeria, for instance, has the highest number of children out of school. Between 75 per cent and 80 per cent of the girls in Kebbi, Solito, Jigawa, Katsina and Kano states are not in secondary schools, and in 16 states, more than 50 per cent of the girls have no access to secondary school education⁸⁷.

Child Health

There has been a steady decline in infant and under-five mortality across Africa's wealth divide, demonstrating progress made in improving early childhood healthcare. This could be due to improved vaccination coverage, which has registered tremendous positive result across the continent. Vaccination for polio and tuberculosis currently covers majority of the African population.

Table 5 shows the status of maternal, newborn, and child health across different countries.

Table 5: Maternal, Newborn and Child Health

Country	Under 5 mortality per 1000 live births	Annual Number of under 5 deaths	Percentage of under 5 suffering from malnutrition	Percentage of routine expanded programme on immunisation vaccines financed by government
Nigeria	141	861,000	41%	68%
Mozambique	135	114,000	44%	24%
Rwanda	91	438,000	44%	46%
Kenya	85	122,000	41%	48%
Senegal	75	34,000	31%	100%
South Africa	57	58,000	23%	100%
Ghana	74	57,000	87%	Not Available
Malawi	92	56,000	44%	36%
Cameroon	---	---	---	---

(Source: Africa Public Health Info and Civil Society Coalition on Maternal, Newborn and Child Health, 2012)

While Ghana seems to have hit the Millennium Development Goals (MDG) target on this, the country's poor communities still experience high infant mortality especially in rural areas. Nigeria has one of the highest child mortality rates followed by Malawi, Rwanda, Kenya, Senegal and South Africa, as can be seen from Table 5.

Most African governments have also taken necessary measures to protect children from child labour and all forms of labour exploitation, including child trafficking. In Ghana, this protection is outlined in the Children Act. However, poverty is still pushing children to work on farms and in mining areas.

Adolescent Fertility

The adolescent fertility rate is defined as the number of births per 1,000 women aged between 15 and 19 years. Having children this early in life exposes adolescent women to unnecessary risks. Their chance of dying is twice as high as that of a woman who waited until her 20s to begin childbearing. In addition, early childbearing greatly reduces the likelihood of a girl advancing her education and limits her opportunities for training and employment. Globally, the trend has certainly been downward, but there are very sharp differences in levels and trends across regions.

Sub-Saharan Africa has the world's highest level of adolescent childbearing. Its decline is a key factor in lowering both fertility and high population growth in that impoverished region. Estimates from the UN Population Division indicate that adolescent fertility declined from 134 live births per 1,000 women aged 15 to 19 in the 1995-2000 period to 115 in 2005-2010¹. Put another way, 13 per cent of 15-to-19-year-olds gave birth every year between 1995 and 2000 and that proportion declined only slightly to 12 per cent in 2010. At that rate of decrease, it would take sub-Saharan Africa nearly a half-century to reach Europe's current level of teenage childbearing of 19. As measured in surveys, there are countries in sub-Saharan Africa where teenage childbearing has declined faster than the average pace: Benin, Cameroon, Eritrea, Ethiopia, Gabon, Ghana, Kenya, Namibia, Nigeria, Rwanda, Mozambique, Senegal, Tanzania, and Uganda. Still, even in those countries, rates are quite high by world standards, with half above 100. In five sub-Saharan African countries, the teenage rate has actually risen: Burundi, with a recent rate of 65, Chad (203), Congo (Brazzaville) (147), Lesotho (96), and Zimbabwe (115).

Table 6 shows the status of Sexual Reproductive Health across the nine case study countries.

Table 6: Reproductive and Sexual Health Scorecard

Country	Adolescent Fertility Rate Births per 1000 young women aged 15-19	Percentage of Girls Married by age of 15
Cameroon	141	11%
Ghana	70	6%
Kenya	106	---
Malawi	177	50%
Mozambique	185	52%
Nigeria	123	17%
Rwanda	43	1%
Senegal	96	10%
South Africa	54	1%

(Source: Africa Public Health Info, Africa Reproductive and Sexual Health Scorecard, 3rd Quarter, 2012)

The causes of decline (or lack of decline) in adolescent fertility varies widely between countries. In countries where births outside marriage are socially unacceptable, delayed marriage plays a significant role in the decline. But social norms and expectations that girls will marry young can also encourage early marriage and child-

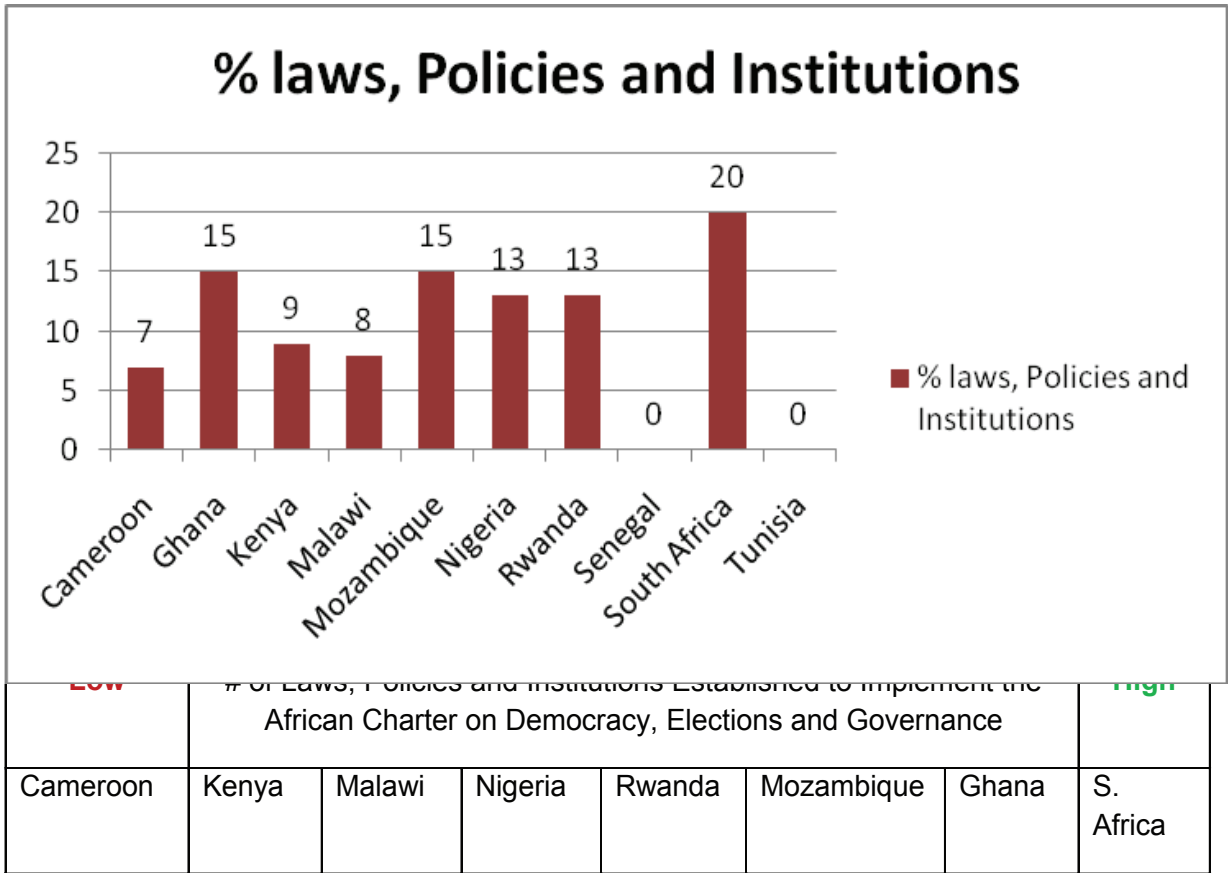
bearing. Keeping girls in school also delays marriage and childbearing. And data show that levels of education play a role as well: As women receive more education, their desired number of children declines. Effective family planning programmes can help women to choose the timing and number of children they have. But many countries struggle to extend family planning and reproductive health services to large rural populations and to the urban poor.

Mother-to-child transmission of HIV/Aids

The challenge of fertility also comes with the problem of mother-to-child HIV transmission. South Africa, Mozambique and Malawi are among the top 10countries most affected by mother-to-child transmission of HIV for children under 15 years. ⁸⁸The major challenges in the nine countries studied include child marriages, with Nigeria, Cameroon, Mozambique and Malawi among the top 10 countries leading on the continent. Alongside this is the problem of child mortality, with Nigeria, Cameroon, Mozambique and Malawi most affected. In these countries, over 75 per cent of the girls forced into marriage live with HIV/Aids . ⁸⁹ The prevalence of HIV among girls aged between 14 and 24 is highest in South Africa, Mozambique and Malawi⁹⁰. Figure 11 has summarised compliance by countries with the African Convention on the Rights and Welfare of the Child and the African Charter.

Compliance with the African Convention on the Rights and Welfare of the Child and the African Youth Charter

Figure 11: Percentage of Laws, Policies and Institutions Established to Protect the Rights and Welfare of the Child and the Youth



Youth development policies

Young people - the youth - constitute a substantial share (about 65%) of the population of most sub-Saharan African countries and of the region as a whole. This creates a need for practical policies and related programmes to engage youth effectively in all aspects of the development of their countries.

Most African governments, famously the governments of Ethiopia, Ghana, Kenya, Nigeria and Uganda, are addressing this need by enacting youth policies to support the growth and inclusion of young people.

Issue areas of national youth development policies

The cross-cutting challenges facing the youth in Africa today include, but are not limited to, the lack of access to a high-quality and relevant education, high rates of persistent unemployment, a high incidence of chronic poverty, political disengagement, and poor environmental health. The primary focus of national youth policies should be to address these challenges. These also form the focus areas of the AU's African Youth Charter (AYC).

However, the existing youth policies potentially have several challenges. These include their lack of pro-jobs and pro-youth economic growth agendas; non-integration of the policies into national development plans; lack of broad macroeconomic policies that mainstream youth policies; and the governments' lack of capacity to undertake comprehensive monitoring and evaluative processes for these policies.

National youth policies in the nine countries are not of uniform length or depth. Some like those of Cameroon, Kenya and Ghana, are short but cover many pertinent issues envisaged in the African Youth Charter. Such brief policies are supplemented by implicit policies relating to broader issues such as agriculture, employment creation, health, small scale development, mining and forestry, among others that have strong emphasis on issues of youth development. The policies of Malawi, Nigeria and South African are deeper and even go beyond the minimum standards set by the African Youth Charter. Nigeria's youth policy had a robust implementation strategy for the period 2009 and 2014 but the implementation was not as comprehensive as envisaged in the plan.

Some of the key components of the existing national youth policies as regards the provisions of the AYC are discussed here with respect to their implementation in AU member states.

Youth, democracy and good governance

AYC emphasises democracy and governance to enable youth to organise freely, participate in decision making at all levels, understand, promote and defend democracy and human rights, and create conditions under which youth will acquire a culture of tolerance, dialogue, peace and mutual respect. Most African countries include these elements in their national youth policies, as is evident in Cameroon, Ghana, Kenya, Malawi, Mozambique, Nigeria, Rwanda and South Africa. The Nigerian Youth Policy of 2009 includes the duty of the youth to be patriotic, resist religious and ethnic bigotry, and to refrain from violence, crime, cultism, alcoholism, substance abuse and prostitution. The South African National Youth Policy 2009 - 2014 provides for the duty of the youth to promote human dignity, respect parents and elders, work towards family social cohesion, espouse work ethics and encourage a culture of volunteerism.

Youth participation in economic development

The cross-cutting objective in most policies is to enable youth to take part in the formulation and evaluation of economic and social development policies; help youth to create jobs for themselves; enable rural youth to acquire production capacity and assets to make it possible for them produce and participate in local, national and international markets; and to work with the private sector to enable it to create more jobs for youth.

Malawian and Nigerian national youth policies have placed emphasis on giving the youth the capacity to participate in agricultural activities. Most other states' policies do not give emphasis to any particular sector but emphasise capacity to participate in all sectors of the economy.

Youth education and training

Most AU member states' policies – including all the case study countries - state in their introduction that untrained youth can easily become victims of vice and anti-social behaviour. The policies of Ghana, Malawi, Nigeria and South Africa underline the concern for unemployed and uneducated youth easily becoming prone to various forms of exploitation.

The policies seek to increase access to education for all the youth; reduce imbalances in access to education opportunities for rural and urban youth on the one hand and female and male youth on the other; seek ways to ensure school dropouts and out-of-school youth with social problems are integrated; establish ways to provide appropriate counselling to youth on careers and employment, and to create conditions for vocational education and training to offer skills that empower youth to get employed or to create jobs for themselves.

The policies of Cameroon, Nigeria and South Africa have provisions on the formation and management of the National Youth Service. While Nigeria and South Africa give more detailed guidelines on how to make education and training more oriented to production and service to society, most African national youth policies do not contain such guidelines.

Youth and health

The overall goals of youth health is to create conditions that enable youth to access preventive health education and facilities, counselling on reproductive health and to acquire the necessary information to enable them to live healthy lives. Special guidelines are provided in the policies of Malawi, Nigeria and South Africa on interventions required to enable youth to mobilise themselves in the campaigns against HIV/Aids; to enable them to access information, counselling, care and support in coping with HIV/Aids; and to enable those living with HIV/Aids to participate in campaigns against stigma and discrimination. The policies of the other countries do not contain such detailed guidelines.

Youth with social problems

A good number of AU member states – including all the nine case study countries have policies that expressly target street children and children with social problems. The policy guidelines aim to reintegrate these groups into communities and the society. Apart from the policies in Nigeria, Malawi and South Africa, most other youth policies do not provide for concrete measures to reintegrate youth with social problems into society and to protect them from becoming more vulnerable. The three aforementioned policies spell out measures to establish institutions for

rehabilitation of such groups and to enable them to participate in programmes aimed at discouraging or reducing smoking and use of dangerous substances including alcohol. There is, however, little evidence on how these measures have been implemented across countries and what resources have been allocated to the relevant institutions.

Youth and conflict

Youth experiencing conflict are an increasingly common target of most national youth policies. Policies and laws put in place in these countries, especially in all the nine case study countries, outlaw the recruitment of child soldiers or their engagement in combat activities. The policies also identify other policies that seek to engage and involve youth in order to give them alternative livelihoods.

These policies seek to promote employment opportunities, increase access to productive resources for youth, and by increasing access to educational opportunities, reduce their propensity to get involved in crime clandestine economies, military or combat activities.

Youth, culture and sport

In all the case study countries, youth policies have made the strengthening of sport, cultural activities and recreation a priority. Ministries of youth, culture and sport have been established. The objectives include the creation of awareness of national values and heritage; providing opportunity for youth to understand the history of their communities and countries; enabling them to develop their natural and acquired talents through sports, theatre and art, and to nurture and promote their creativity and competitiveness. Kenya's Ministry of Sports, Culture and the Arts ensures the sector contributes to the overall national development through promotion and exploitation of the country's diverse culture for peaceful co-existence; enhancing its reading culture through expansion of library network for increased information access; and development and promotion of sports for a vibrant sporting industry.

The cross-cutting objective is to increase the role of the youth in eradicating harmful practices and preserving the positive ones.

Youth, environmental protection and community service

To enable the youth preserve the environment, both youth and environment management, increase their role and participation in community programmes for natural resources management and preservation, link them to their communities and enable them to participate in decisions relating to natural resources management and preservation.

These strategies are included in the policies of most AU member states – including all the case study countries.

Gender awareness

Few African states have gender-responsive youth policies in place. Ghana, Malawi, Nigeria and South Africa have, however, incorporated this element in their national

youth policies, with strong emphasis on exposing both young men and women to tools for understanding and achieving gender equality. This is appreciation of the need to develop youth into human beings who think in terms of both genders when deciding on issues of power, production and resources distribution as they grow up a strong pillar for the South African youth policy.

Cameroon and Kenya have, however, not included this component.

Young people's rights

Malawi, Nigeria, Rwanda and South African youth policies contain comprehensive lists of the rights of young men and women, a component not explicitly captured in Cameroon, Ghana, Kenya and Mozambique policy documents. These range from basic freedoms to political, social and economic rights, including the right to access education and health service, to the rights to a happy and healthy childhood. These rights are backed by duties of the state to provide the necessary support to enable youth to participate in civic activities, access social services and employment and economic opportunities.

The policies on Nigeria, Rwanda and South Africa give sector by sector guidelines on interventions by government to enable the youth to enjoy their rights and entitlements. Ghana, Cameroon, Kenya and Mozambique are, however, short on such details, with the Malawi youth policy falling in between the two groups.

Assessment of policy effectiveness

The success of implementing national youth policies - and by extension the AYC - has been varied across AU member states. **Cameroon's** youth policy, for instance, has not been enthusiastically implemented due to lack of political will to push for realisation of its provisions. The government perceives the youth as an unprogressive group fit only for political leverage. In Cameroon, a key challenge to implementation is that youth groups are registered along ethnic lines and youth institutions lack sufficient funds to carry out their functions⁹¹.

While **Ghana** and **Kenya's** youth policies are clear and comprehensive, they have not transformed the youth into a recognised development force. Kenya's Vision 2030, which aims to create at least 500,000 jobs each year, falls short of the possible solution to the youth unemployment problem: by 2014, it was estimated to cater for at least 1.9 million youth. Available youth training grants are small and do not reach all in need; free and compulsory education does not ensure that all children get to school, especially in marginalised communities; and although the government has taken measures to curb the sale and consumption of tobacco, youth smoking is still on the rise.

A study on the effectiveness of Kenya's Youth Enterprise Development Fund also notes that while the government has put a substantial amount of financial resources in the fund, the programmes have not resolved the chronic problems that hamper increase in youth employment opportunities such as: limited access to adequate financial resources to enable them to start dynamic businesses, lack of appropriate skills required in the labour market, lack of entrepreneurial culture among some

youth, lack of mechanisms for entry and re-entry into the labour market, and limited access to information on labour and other markets. ⁹²



In the **Malawi** National Youth Policy, a definition of youth is missing, with the explanation for this being the existence of varying traditions on the definition in the country. Malawi's youth credit schemes, namely the Youth Credit Development Scheme (1996) and the Youth Entrepreneurship Development Fund, are neither robust nor funded enough to counter youth unemployment, which stood at 15.2 per cent in 2014.

Although Malawi's policy puts much emphasis on getting the youth to engage in agriculture, there are no incentives and financial institutions to support youth involvement in commercial agriculture. The youth also lack information on resources required to support their involvement; infrastructure in the rural areas is not conducive to rural growth; and they lack awareness about agricultural policies and government rarely involves youth in policy decisions or dialogue. The youth also lack the capacity to articulate their ideas effectively⁹³.

Mozambique also seems to have good ideas on youth, but has remained hesitant to formulate a strong policy. The first policy was passed in 1996 and updated in 2011. The difference between the two policy documents is thin in terms of commitments, and rights of the youth are not defined in either. The level of consultation between the government and the youth is still low, and there are no robust youth-centred training programmes. Most youth programmes - such as the Programme for the Preparation of Youth for Work (PREPA) - are dependent on donor funds and, hence, unsustainable.

Nigeria has established the Nigerian Youth Parliament as an institution complementing the National Youth Council. Both are coordinated by the Ministry of Youth and Sports. However, the ministry has been accused of not empowering the youth but instead using these institutions for political ends. It organises activities such as the Youth Day, which are not transformative. The youth are also not in control of their own leadership: The youth

leader of the ruling party as at 2013, for instance, was a 63-year-old man. Government has also failed to improve the quality of education in Nigeria, and hence the brain-drain to Ghana, the United Kingdom, and other countries. Youth unemployment is still as high as 40 per cent in urban areas, and teenage pregnancies and early motherhood are on the rise.

Rwanda has established a comprehensive institutional mechanism for implementing the AYC and its national youth policy. The ministry and national youth council handles youth affairs. It has also established Youth One-Stop Centres for skills training, information exchange and participation by the youth in political and other affairs. Technical and Vocational Education and Training (VET) is the main vehicle for skills training, complemented by regional polytechnics. Youth cooperatives for self-employment have been encouraged and are government-funded through the Central Bank.

South Africa launched three major youth focused programmes: the Contact Information and Counselling; the Skill Development and Transfer Programme; and the Youth Entrepreneurship Development Programme. These are coordinated by the National Youth Development Agency and the Youth Desk in the Presidency, which monitors and evaluates implementation of youth policies. The National Youth Development Agency has played a key role in mainstreaming policies on youth throughout all government agencies, and it links government and CSOs as well as the private sector on youth development initiatives.

On the whole, South Africa has the most focused youth policy with proper policy implementation programmes on the ground.

Chapter 5:

Agriculture and Conservation of Nature



Instruments under review:

Comprehensive Africa Agriculture Development Programme (CAADP) The African Convention on the Conservation of Nature and Natural Resources

Indicators:

Expenditure of 10 per cent of the annual budget on agriculture and rural development; Annual growth rate of budget to agriculture; Strategy for attracting foreign investments; Monitoring and evaluation strategy; Value chain development; Financial market, human capacity development for the agriculture sector; Irrigation programmes; Agricultural mechanization; Level of supply of seeds and fertilizers to farmers; measures taken to ensure sustainable land utilization; Linkages developed between the various ministries dealing with water, land, health and climate change; Established institutions on land and water conservation and environmental management; Capacity and power to enforce regulations; Capacity and training for the forestry sector; Measures taken to regulate environmental development; Agricultural productivity among small farmers, Dependency of agriculture on rainfall; Level of malnutrition, Level of stunting among children under 5 years; Wasting by children under five years; Percentage of underweight children below five years; Number of laws, institutions and policies governing land distribution and utilization; Measures taken to deepen good governance and undertaken policy reforms aimed at involving civil society organizations; Agro-dealer networks; Support for the emergence of rural micro-finance.

Introduction

The African Convention on the Conservation of Nature and Natural Resources calls upon Member States of the AU to take all measures necessary to conserve soil, water, flora and fauna in accordance with scientific principles. The Comprehensive Africa Agriculture Development Programme (CAADP) is an African Union/New Partnership for Africa's Development (NEPAD) initiative to accelerate growth and reduce poverty and hunger on the continent. It seeks to address the agricultural crisis in Africa and provides guidelines on priority areas for investment, including land and water management; improvement of road and transport infrastructure and capacity development for increased market access; increasing food supply and reducing hunger; and agricultural research, technology dissemination and adoption. It also provides guidelines on investments and emphasises public-private partnerships.

The Maputo Declaration of 2003 on CAADP commits Member States to spend at least 10 per cent of their annual budgets on agriculture and rural development. CAADP's primary goal is to assist countries to raise economic growth through agriculture - led development under a common framework reflecting principles and targets defined by African governments to guide their agricultural strategies and investments. CAADP's operational strategies flow from those of NEPAD. These include i) a broad accommodation with the prevailing market-oriented international development paradigm, while ii) re-establishing African institutions (and especially governments) firmly at the centre of policy and planning processes, and also iii) a pan-Africanist approach to tackling common development challenges. The four CAADP "pillars" that remain today include: land and water management, rural infrastructure for market access, increasing food supply (reducing hunger) and agricultural research.

Policy frameworks for CAADP

Following the Maputo Declaration, the Food and Agriculture Organisation (FAO) was commissioned to identify bankable investment projects around the continent. Their evaluation report of 2011 (Brüntrup, 2011)⁹⁴ revealed that CAADP programmes were not integrated with countries' national agricultural strategies. As a result, they gained neither government nor donor buy-in, hence were not implemented. From 2005, therefore, the NEPAD secretariat began to develop a new strategy for realising CAADP objectives. This placed greater emphasis on influencing and improving national agricultural policy formulation.

It envisaged a process for developing and gaining consensus around an overarching national agricultural policy. This process would be launched at a multi-stakeholder workshop, then enter a technical phase of policy review and modelling, generating outputs for deliberation at a second multi-stakeholder event (known as a Round Table) that culminated in the signing of a "CAADP Compact" by representatives of government, non-state actors, regional and continental institutions, and donors (NEPAD, 2010)⁹⁵. The Regional Economic Communities (RECs) of the AU thus became important players within the CAADP approach, charged with taking "leadership in stimulating, coordinating and facilitating support (financial, expert/technical information, etc.) for country CAADP implementation processes" (NEPAD, 2010, p7).

During this phase, too, International Food Policy Research Institute (IFPRI) was brought on board to provide technical support to CAADP, including conducting the modelling work to inform country-level processes. IFPRI now works with African partners to conduct research and provide analytical support to the establishment of a comprehensive rural development component under the region's broader development strategies, and according to CAADP

principles. Research is under way in seven African countries: Ethiopia, Ghana, Malawi, Mali, Mozambique, Niger, Nigeria, Rwanda, Senegal, Uganda, and Zambia.

The CAADP process, especially post-2005, seeks to enhance the quality of national agricultural policy and planning. The 2014 Report further seeks to enhance political commitment to invest in agriculture in Africa.

Agricultural sector performance

For Africa as a whole, the average rate of growth of agricultural value added has declined from 6.2 per cent in 1995–2003 to 5.1 per cent in 2003–2012. Growth during this period was affected by the severe global food and financial market crises, during which Africa was the only region that managed to maintain a positive growth rate, although not at the 6 per cent CAADP target level. During this period, none of Africa's geographic regions, economic groups or RECs met the CAADP growth target. The GDP share of agriculture decreased in all geographic regions, economic classifications, and RECs in 2003 - 2012 compared to the two earlier periods. This declining trend is expected as economies transform and other sectors of the economy, such as services and manufacturing, grow faster and overtake agriculture.

Progress in the CAADP implementation process

By March 2014, 33 countries had signed CAADP compacts⁹⁶, and of these, 25 had developed national agriculture and food security investment plans (NAFSIPs) to operationalize the commitments in the compacts. Momentum toward signing CAADP compacts did not pick up until 2009, two years after the first compact was signed by Rwanda in 2007. Since 2009, the speed of signing CAADP compacts and developing NAFSIPs reflects the commitments of African Heads of State and Government to implementing CAADP as the framework for developing agriculture to improve food and nutrition security, create employment, reduce poverty, and achieve resilience for vulnerable communities and ecosystems.

In 'A Review of the Comprehensive Africa Agriculture Development Programme (CAADP): A focus on achievements' held in Pretoria on February 19 and 20, 2009, Prof Richard Mkandawire reported that Senegal, Kenya and Malawi had taken measures to deepen good governance and undertaken policy reforms aimed at involving civil society organisations and agro-dealer networks as well as supporting the emergence of rural micro-finance; Mali, Madagascar, Malawi, Namibia, Niger, Chad and Ethiopia had reached or exceeded the Maputo target of 10 per cent budget allocations; at least nine countries including Nigeria and Senegal had graduated to more than 5 per cent annual growth; Mozambique and Rwanda, among others, had secured OPEC funding for agriculture; a SADC investment fund of up to \$150 million had been set up to support agriculture in the region. Multi-country agricultural productivity programmes were also being set up in West, Central and Southern Africa. Research support by the Forum for Agricultural Research in Africa (FARA) up to the tune of US\$50 million has been set aside and Research-into-Use has set aside another US\$50 million to support agriculture in Rwanda, Malawi and Nigeria, among other countries.

Ghana, Kenya, Malawi, Mozambique, Nigeria and Rwanda have taken commendable steps in implementing CAADP. Fan, et al⁹⁷ report that few African countries had reached the target of devoting 10 per cent of their national budget to the agricultural sector by 2008 (the deadline set in the Maputo Declaration). Moreover, some of the countries that did so (for example, Burkina Faso and Ethiopia) already devoted more than 10 per cent of their national budget to the agricultural sector in 2003. More recent assessments confirm that it is still only a small minority of countries that have reached the Maputo 10 per cent target (ActionAid, 2013; Be-

nin and Yu, 2013 , ONE , 2013) In Malawi, a large increase in agricultural budget share occurred as a result of the introduction of the farm input subsidy programme starting in 2005/6. This was driven by short-term political considerations (Chinsinga, 2012) , rather than any commitment to CAADP. The challenge in most countries, however, is that they still look at CAADP as a project or programme rather than as a framework to guide their actions. In addition, ministerial networking is limited because of the structures of ministries and budgets; the project approach has continued to make most activities donor dependent; and the commitment to allocate at least 10 per cent of the budget to agriculture has not been met by all. Following is a deeper assessment of the progress made in implementing CAADP in selected case study countries.

Rwanda

IFPRI provided technical support throughout the preparation of Rwanda's CAADP roundtable discussion, the first successful discussion of its kind in Africa, analysing and inputting into the design and establishment of the country-level knowledge system support nodes to implement CAADP at the country level. This approach required: broad consultation with stakeholders in Rwanda; close collaboration with in-country research teams; intensive and comprehensive review of existing strategies, plans, and resource allocations in the agricultural and rural sector; development of an integrated framework combining econometric and general equilibrium approaches to analyse the role of agriculture in growth and poverty reduction and to examine policies and public investment options affecting smallholders within a broader development framework; and capacity building to foster country ownership and the sustainability of strategy research in Rwanda. The Government of Rwanda has moved to a second phase that emphasises the formulation of policy and investment strategy options for sustained agricultural growth, poverty reduction, and food security. IFPRI has started further research analysis to support this implementation process. Rwanda's CAADP process has set an example emphasising evidence-based policymaking for other countries in their CAADP alignment processes. Following poor harvests and disappointing poverty reduction figures in the mid-2000s, President Kagame, convinced of the need to prioritise agricultural investment, used CAADP to make a case to both government and donors, for social sector spending (Golooba-Mutebi, forthcoming)¹⁰².

The increase in budget allocation to the agricultural sector was more dramatic and coincided with the signing of the CAADP compact. However, the driving force behind these changes was the realisation by senior politicians, following publication of new national poverty figures in 2006 that the government had to greatly prioritise agriculture if it was to realise its objective of broad-based growth and poverty reduction (Golooba-Mutebi, forthcoming). At this point, President Kagame, a strong supporter of NEPAD, viewed CAADP as a vehicle for justifying social spending. With IFPRI's support, the government has dramatically increased the share of its budget devoted to agriculture and, with effective delivery of interventions, seen benefits in terms of both agricultural production and accelerated poverty reduction. Rwanda is now committed to expanding the agriculture share beyond 10 per cent of the national budget in the next few years.

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Ghana

In Ghana, political incentives to invest in agriculture are focused firstly on cocoa (Whitfield,

2011), due to its contribution to wider economic growth (Lindberg, 2011). Beyond cocoa, there is a remarkably strong neo-liberal consensus among technocrats, donors and even politicians, who seem willing to let technocrats and donors largely determine what is funded. Here, an exemplary CAADP process was observed, but it is nevertheless hard to ascribe any significant change to it, for reasons explained here (Kolavalli, et al. 2010). Ghana has launched the Medium Term Agriculture Sector Investment (METASIP) covering the period 2009 to 2015. It aims at an annual growth rate of 6 per cent and allocation of at least 10 per cent of the budget to agriculture. However, the policy is weak on issues of partnership; there was no clear strategy for attracting foreign investments; and the monitoring and evaluation strategy was not clear. Ghana is also expected to be the first African country to halve levels of poverty and hunger under Goal 1 of the MDGs, though this will take additional efforts if its current annual growth at 4.2 per cent, which was below the CAADP target of 6 per cent, is to be attained.

On the adoption of best practices, Ghana's METASIP has been commended for its inclusion of value chain development, financial market development and human capacity development. It also includes concrete strategies for reducing food insecurity. However, the distributional impact of the programme may be unequal and, as such, Ghana should strengthen its focus on the northern part of the country. It should also factor into the programme issues of climate change, competition for water and land, and increase electrification and telecommunications while strengthening inter-ministerial networking and partnerships. In the implementation of METASIP, Ghana has invested in new irrigation programmes, embarked on agricultural mechanisation, intensified supply of seeds and fertilisers to farmers and taken concrete measures to reduce food insecurity. Additionally, Ghana has registered a steady increase in the share of actual expenditure devoted to agriculture over the decade 2001-11, from an average of 6.4 per cent during 2001-03 to 9 per cent during 2004-07, reaching or exceeding 10 per cent during 2008-11. Moreover, the share of agricultural expenditure accounted for by cocoa fell over time, though it remains disproportionate to its contribution to sector GDP. President John Kufuor's government apparently took its Maputo commitment seriously, with reference to the 10 per cent target appearing in the FASDEP II (2007) agricultural strategy. An attendant challenge has been the increase, from 2005, in the share of agricultural expenditure accounted for by donors, which may partly explain the shifting composition of expenditure towards food staples, as well as the increasing share of actual expenditure.

Ghana has also made great strides in reducing the incidence of extreme poverty, which has focused attention on the fact that the remaining poverty is increasingly concentrated in the agricultural (especially food crop) regions to the north of the country. However, the introduction of a fertiliser subsidy in 2008 (Banful, 2011), subsequently expanded in 2009 under a National Democratic Convention (NDC) government, is a rare example of a major agricultural programme to particularly direct expenditure towards the north of the country.

Mozambique

Mozambique was a relatively late starter on CAADP processes. Its engagement was stimulated by a break-down in previous government-donor relations in the agriculture sector, hence the need to revive donor support. However, top politicians remain unsure of the role smallholder agriculture should play in Mozambique's increasingly mineral-based and urbanising economy. As a result, the prospects for a strong and coherent policy to support smallholders are slim. This is compounded by the generous tax breaks given to minerals investors, which undermine the revenues that the government has at its disposal for investment in support of smallholder production (C. Castel-Branco, pers.comm). However, Mozambique is one of the countries with low political incentives to support smallholder agriculture: The share of the budget devoted to agriculture has

fluctuated around the 5 per cent level over the past decade, with no discernible trend or CAADP effect.

Kenya

Kenya's Medium Term Investment Plan (2010-2015) had incorporated most of the CAADP pillars and guidelines. The Agriculture Sector Development Strategy (ASDS), the guiding policy document, seeks to increase agricultural growth to 7 per cent, a percentage point higher than the CADDP target. It has set a target of reducing the number of people living on less than \$1.2 a day from 36 per cent to 22 per cent, and to reduce food insecurity. However, Kenya's funding for the agricultural sector fell below the 10 per cent target in the Maputo Declaration; stakeholders had not been engaged sufficiently enough in the assessment of the Medium Term Investment Plan; there was no clear prioritisation of commodity value chains in the targeted ecological zones in both the MTIP and ASDS; and although the MTIP was robust on sustainable land utilisation, linkages between the various ministries dealing with water, land, health and climate change were not as vibrant as the measures proposed. This called for clear integration of food and nutrition issues into the ASDS. The MTIP does not also articulate the needs of women, and should, therefore, be reviewed and updated on gender issues to show clearly how and where research fits in its strategies.

Nigeria

The Federal Ministry of Agriculture and Water Resources developed the Nigerian Agricultural Investment Plan aimed at ensuring sustainable access, availability and affordability of quality food. The government has set a target of growth at 8 per cent and committed to allocate 10 per cent of the budget to agriculture - although this requires institutional reforms accompanied by increased support for extension and involvement of the private sector. Clarity of implementation strategies and effective coordination of the activities of government, CSOs, private sector and other actors is also important.

A growth rate of 12 per cent, which is achievable if productivity is increased tremendously and investments in agriculture upscaled, is recommended to reduce poverty and hunger.

High population growth remains a challenge because as it increases demand for food and intensifies conflicts over natural resources. There is a need for stronger focus on agricultural exports given the size of the market in West Africa; significant reforms are needed to increase efficiency; the Nigerian Food Security Programme needs to be integrated with the Nigerian Agriculture Investment Programme; inter-ministerial dialogue and coordination should be increased; and the plan for monitoring and evaluation needs to be strengthened.

Malawi

Malawi has also taken CAADP very seriously, fulfilling the commitment to allocate 10 per cent of the national budget to agriculture in 2010. In the 2013/14 financial year, the Ministry of Agriculture was allocated 20 per cent of the national budget, of which 50 per cent financed the Farm Inputs Subsidy Programme. 109

One challenge with Agriculture in Malawi is that it remains dependent on rainfall and agricultural productivity among small farmers has remained low. This has kept the level of malnutrition very high; stunting among children under five years rose from 48.7 per cent in 1992 to 56 per cent in 2010/11 and wasting by children under five years rose from 5.4 per cent in 1992 to 11 per cent 2010/11 and the percentage of underweight children under five dropped slightly from 27.2 per cent in 1992 to 25 per cent in 2010/11¹⁰. Malawi's government also realised that participation in CAADP could become a precondition for accessing desperately needed agricultural funding; while donors hoped that the CAADP process

would facilitate a dialogue on diversifying agricultural investment beyond the subsidy programme.

CAADP policy weaknesses and implementation challenges

Lack of prioritisation is a significant weakness in planning processes (Tavakoli, et al. 2013)¹¹¹. The CAADP process has not addressed this challenge to date: Rather, compliance has been assessed in terms of whether or not strategies reflect all four of the CAADP pillars. As the CAADP pillars are fairly generic, most national strategies could be presented as CAADP-compliant (Kolavalli, et al., 2010).

In some cases (for example, in Ethiopia, Ghana and Malawi) the CAADP investment plan has been an existing strategy repackaged to show conformity to the pillars, but with no real change in its content. A key critique of the CAADP enterprise relates to its heavy focus on sector strategies and investment plans, while in African agriculture, formal strategies and plans are often not implemented effectively and sometimes hardly implemented at all (Cooksey, 2012 and Poulton & Kanyinga, 2013)¹¹². This also means that, even if non-state actors do get to influence the formal strategy, they may still not affect policy in practice. Poor implementation of sector strategies and investment plans can be attributed to a number of factors.

The first is weaknesses at the planning stage - in particular, a lack of prioritisation, as discussed earlier. This is likely to mean that financial or human resources (or both) are insufficient to implement all the proposed activities effectively, with the result either that a non-transparent selection process determines which activities take or do not take priority, or that most activities are undertaken in such a way as to achieve little impact. Some CAADP investment plans, for instance, go significantly underfunded (Benin et al., 2011), which illustrates this problem. A second factor is the low state capacity for programme implementation. This is impossible to fully separate from weaknesses at the planning stage, as planners should plan according to implementation capacity. Particular challenges to implementation include: Lack of funds or qualified personnel, and collective action problems with the political elite during programme implementation, as seen in Kenya¹¹³.

The limited attention paid to monitoring and evaluation and lack of political will and commitment to the implementation of this charter are also challenges hampering proper implementation of the framework. Implementation issues are now receiving greater attention through the mechanism of agricultural joint sector reviews. To strengthen political incentives to invest in smallholder agriculture in the (majority of) countries where these incentives are still quite weak, the AU's designation of 2014 as the Year of Agriculture and Food Security shows both the renewed political interest in agriculture and the opportunity that CAADP has to reinforce this. CAADP should build on this renewed interest in agriculture, including interest in the New Alliance agenda for increased commercial investment in the sector, but use its engagement to argue the case for investing in support of smallholders.

There is also a need to harness the commitment of leaders and countries where domestic political incentives for investment in agriculture are high so as to provide peer encouragement for others. It also has to be open to new "hooks", such as the New Alliance, that draw additional countries into meaningful engagement with CAADP. For countries where domestic political incentives are weak, but there is at least formal recognition of the need to invest in agriculture, CAADP can offer ideas for ways forward – facilitating sharing of good practice – but also use collective high-level political commitments to embed particular practices within national processes. Its objective in all countries should be to add value to country processes, rather than to prescribe them. Championing the participation of

the civil society groups into policy processes by seeking to enhance the information flows that they need to become more effective advocates for pro-smallholder agricultural policy.

The state of climate change in Africa

Africa is one of the most vulnerable continents to climate change. Because of this, agricultural production in many African countries and regions will be severely affected by climate change. Agricultural losses are estimated to be possibly severe for several areas (like the Sahel, East Africa, and southern Africa) accompanied by changes in the length of growing periods, impacting mixed rain-fed, arid and semi-arid systems under certain climate projections. In some countries, yields from rain-fed agriculture could be reduced by up to 50 per cent by 2020, leading to loss of livelihood and social anarchy among the people.

Over time, some regions in East Africa have become drier due to changes in land use pattern and climate. Water sources are becoming intermittent or disappearing; streams that used to run year-round are now seasonal. By 2020, some assessments project that 75 to 250 million of Africa's citizens are estimated to be exposed to increased water stress due to climate change. Some assessments, for example, show severe increased water stress and possible increased drought risk for parts of northern and southern Africa and increases in run-off in East Africa. Water access is, however, threatened not only by climate change, but also by complex river basin management.

This, coupled with increased demand, will adversely affect livelihoods. Changes in the ecosystem have also had significant impact on wild sources of food, which have become scarce. Human health for Africa's citizens, already compromised by a range of factors, could also be further hit by the negative impacts of climate change and climate variability (for example, previously malaria-free highland areas in Ethiopia, Kenya, Rwanda, and Burundi could also experience incidences of malaria by the 2050s, with the conditions for transmission becoming highly suitable by the 2080s). This calls for mechanisms for conserving the environment to ensure it is fit for habitation.

Mechanisms for conserving the environment

AU member states have put in place various measures for conserving the environment, including the establishment of environmental protection agencies, environmental research institutes, remote sensing centres, disaster preparedness programmes and extension services to farmers. In recent years, especially in the past three years, land transfers and privatisation of land has undermined earlier initiatives aimed at conservation. Large tracts of land have been leased by governments to mining and logging companies without restrictions on land use, thereby allowing environmentally destructive methods of land use such as open cast mining and destructive methods of fishing. These trends, if uncontrolled, risk undermining all the past conservation measures and their gains.

Among the most progressive mechanisms put in place to govern nature conservation are constitutional provisions, a key achievement credited to Kenya. The Constitution also established the National Land Commission, governed by the new National Land Commission Act of 2012, which has drafted the National Land Policy and the National Land Proclamation Policy. Kenya has also concluded a policy on implementing the African Mining Vision in 2011 aimed at increased transparency and revenues from the mining sector.

Nigeria has established the National Agricultural Land and Development Authority to provide leadership and support on land conservation, management and use. The National

Water Supply and Sanitation Policy of 2000, the Water-Sanitation Policy, the National School Health Policy, and the National Environmental Sanitation Policy, the National Health Promotion Policy all deal with water and sanitation issues. The National Environmental Standards and Regulations Enforcement Agency enforces the laws and sets and enforces standards.

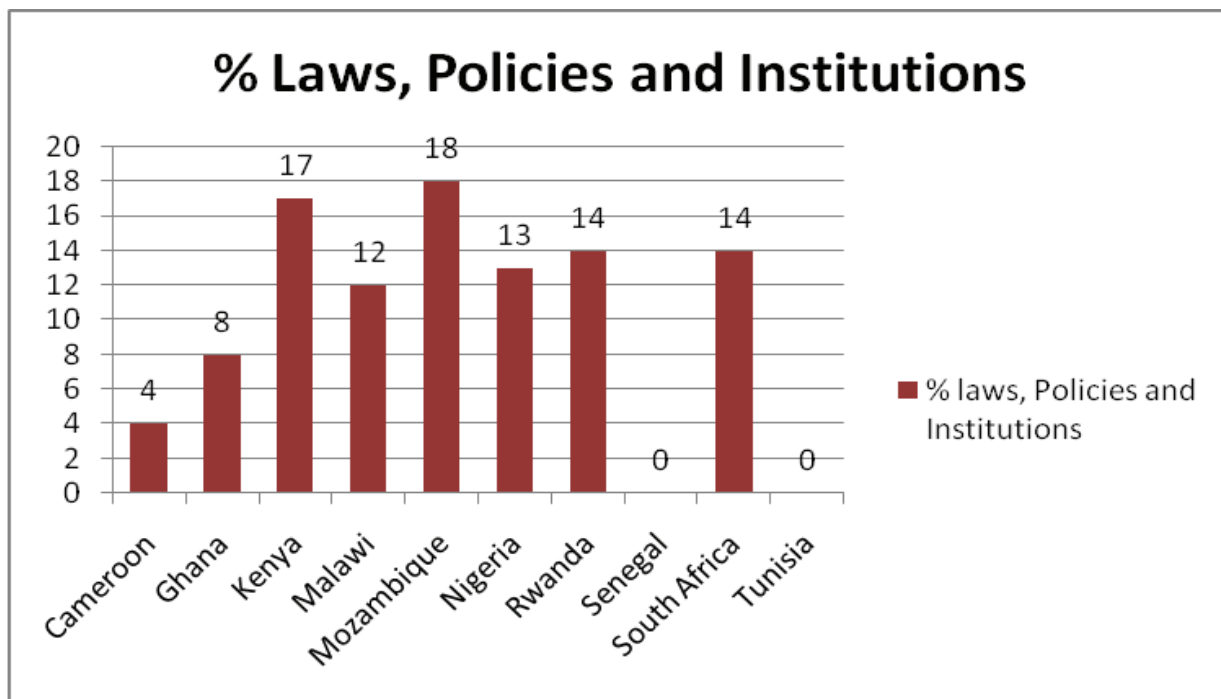
Nigeria faces some challenges with environment conservation, however. First, conservation of forest areas is constrained by obsolete laws that are rarely enforced. As such, destructive practices such as tree felling for commercial purposes have continued unabated, leaving most areas in the northern part of the country fallow. Nigeria's lack of adequate capacity and training for the forestry sector has also contributed to poor forest management. The established mechanisms for enforcing related legislation, especially the Ministry of Environment, have limited capacity and power to enforce regulations. The National Environmental Standards and Regulations Enforcement Agency also has power to regulate environmental development, but its commitment remains limited.

In Malawi, the country's National Land Policy of 2002 is backed by robust laws governing land distribution and utilisation. These laws have, however, not been revised to conform to the provisions of the African Convention on the Conservation of Nature and Natural Resources. Attempts to revise and update them have been resisted by traditional leaders.

Malawi is also yet to sign the Africa Mining Vision of 2009.

Compliance with the African Convention on the Conservation of Nature and Natural Resources

Figure 12: Percentage of Laws, Policies and Institutions for the Conservation of Nature and Natural Resources



Low	No. of laws, policies and institutions established for the conservation of nature and natural resources						High
Cameroon	Ghana	Malawi	Nigeria	Rwanda	S. Africa	Kenya	Mozambique



47 South African Compliance Report, p. 52

48 (Reeves & Baden, 2000)

49 Ibid.50 Ibid

51 USAid op.cit p.4

52 Ibid p.4

53 USAid op.cit p.4

54 USAID, Bureau of Democracy, Human Rights and Labour 2011, 2010 Country Reports on Human Rights Practices: Cameroon, USAid, April 8, 2011 on <http://www.state.gov/j/hrrpt/2010/af/154335.htm> Downloaded on the 9/12/2014

55 Ibid

56 OECD Ibid p.2

- 57 Ibid p.85
- 58 Ibid p.87
- 59 The Ghana report indicates that surveys on compliance with the minimum age requirement show that 25 per cent of the women interviewed in 2008 had married before they reached 18 but the percentage had gone up to 27 per cent in 2011 and that in remote rural and less developed areas the rates were higher (30-50%).
- 60 Ghana Compliance Report, p. 8461 UNESCO, 2014 EFA Global Monitoring Report 2013/4: Teaching and Learning: Achieving Quality for All, UNESCO Publishing, Paris, p.53
- 62 Ibid p. 54
- 63 Ibid p. 85 and p. 88
- 64 Malawi Human Rights Commission, 2014 'Cultural Practices and their Impact on the Enjoyment of Human Rights Particularly the Rights of Women and Children in Malawi' downloaded from [www.https://google.co.uk](https://google.co.uk) on December 30, 2014
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- 66 Human Rights Watch Submission to the Human Rights Committees Consideration of Malawi's Periodic Report, 11th Session.
- 67 Africa Civil Society Coalition on Maternal Newborn and Child Health, 2014, '2013 Q 4 Africa Violence Against Women Multifaceted. Scorecard – Figures and Numbers-Analysis and Findings', downloaded from Afri.dev.info. December 30, 2014
- 68 SOTU Malawi Compliance Report, p.45
- 69 Nigeria Compliance Report, p.51
- 70 (Reeves & Baden, 2000)
- 71 Ibid.
- 72 Ibid.
- 73 Ibid
- 74 USAid, Bureau of Democracy, Human Rights and Labour 2011, 2010 Country Reports on Human Rights Practices: Cameroon, USAid, April 8, 2011 on <http://www.state.gov/j/rrrpt/2010/af/154335.htm> Downloaded on the 9/12/2014
- 75 Ghana Compliance Report, p.81
- 76 Kenya Compliance Report, p. 41
- Africa Civil Society Coalition on Maternal Newborn and Child Health, '2012, Africa Maternal Health Scorecard
- 78 Incorporating Health Workforce', downloaded from [Africa Public Healths.info](http://Africa.PublicHealths.info)
- 79 Ibid. p.31
- 80 Luthuli v The State (1049/2013) (2014) ZASCA 164 (October 1, 2014)
- 81 South African Compliance Report, p. 54
- 82 UNECA, 2013
- 83 Middleton, op.cit.p.30
- 84 Ibid
- 85 Rwanda Compliance Report, p.65
- 86 OECD op.cit p.4
- 87 Africa Coalition on Maternal Newborn & Child Health 2013, Nigeria Girl Child Education Scorecard, on Afri-Dev. Info downloaded on December 29, 2014
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- 90 Africa Coalition on Maternal, Newborn & Child Health, 2014, Southern Africa/SADC 2014 contextual scorecard and Fact Sheet on HIV, Sexual Reproductive Health and Rights, and Universal Coverage.
- 91 United Network of Young Peacebuilders (UNOY), 'Youth Policies in Cameroon' on www.youthpolicy.org/development/youth-policies-cameroon-evaluating-theory-and-practice, June 12, 2014
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Chapter 6:

Health



Instruments under review:

The Plan of Action on Sexual and Reproductive Health and Rights
(Maputo Plan of Action)

The Abuja Call for Universal Access to HIV/Aids, Tuberculosis and Malaria Services by
United Action by 2010

Indicators:

Adherence to 15 per cent annual budget allocation for health; Increase in government expenditure and external expenditure on health; Number of women living with HIV/Aids; HIV prevalence rate; Percentage of HIV/Aids related maternal deaths; Access to preventive services; Contraceptive prevalence rate; Total fertility per woman; Number and proportion of people under the state of malnourishment; Number of laws, policies and institutions established to ensure sexual and reproductive health and rights; Number of laws, policies and institutions established to ensure universal access to HIV/Aids, tuberculosis and malaria services.

Introduction

This chapter examines implementation of the Plan of Action on Sexual and Reproductive Health and Rights (Maputo Plan of Action); and the Abuja Call for Universal Access to HIV/Aids, Tuberculosis and Malaria Services by United Action by 2010. The Maputo Plan of Action addresses sexual reproductive health and rights, and calls upon

member states to increase access to the requisite health services by 2015. It emphasises the integration of sexual and reproductive health and rights into public healthcare systems; calls for safe motherhood, commodity security, and effective monitoring and evaluation systems. The Abuja Call for Universal Access to HIV/Aids, Tuberculosis and Malaria Services seeks accelerated action toward access to health services for the diseases it captures.

The two policies address the lack of policies and legislation protecting people living with HIV/Aids and TB as well as lack of laws on sexual and reproductive health; weak or non-existent systems for monitoring and evaluating access to services; lack of programmes linking sexual and reproductive rights on the one hand, and HIV, TB and malaria with other policies on migration, nutrition and food security, on the other. They, therefore, call for increased resource allocation, protection of human rights through legislation and other mechanisms, linking sexual and reproductive rights and access to services for HIV/Aids, TB and malaria with efforts dedicated to poverty reduction and human development, strengthening health systems and investing heavily in evidence-based prevention, care and support.

The Maputo Plan of Action places emphasis on protection of adolescents; involving men in sexual and reproductive rights programmes; ensuring commodity security; involvement of families in health issues; and maintaining equity between rural and urban areas.

Government spending

The (post-Abuja) 2013 Africa Health Financing Scorecard -- featuring Year 2000 to 2010 - indicative progress summary gave the following picture on governments' expenditure and external expenditure on health. The target for the Abuja commitment by the Heads of State was 15 per cent of the annual budgets.

By 2012, Africa governments spent an average of 6.3 per cent of their total budgets on healthcare. By the same year, only seven African countries (Rwanda, Botswana, Zambia, Lesotho, Liberia, Malawi, and Togo) had met the Abuja pledge. Another 22 countries spent between 10 per cent and 15 per cent of their budgets on health, but 25 countries spent less than 10 per cent of their budgets on health, and five spent less than 5 per cent. A number of countries now allocate a lower proportion of their budgets to healthcare than before Abuja.

While pooling schemes and private healthcare have their place in improving health outcomes in Africa, clinics providing basic care are still crucially important in addressing the most common causes of illness and mortality. Removing fees in rural Zambia in April 2006 and January 2007, for example, resulted in a 55 per cent increase in the use of government facilities. Attendance rates at health centres in Uganda jumped 84 per cent when fees were scrapped in 2001. Ghana's initiative in exempting women from paying for healthcare is credited with reducing maternal mortality from 500 per 100,000 live births in 2000, to 350 in 2008. The same success story does, however, also show up one of the limitations of making healthcare free: because no payment is involved and the measure increased the workload for healthcare professionals while making no effective difference to the supply of healthcare, the number of deliveries attended by skilled nurses actually declined from 2005 to 2007. At the moment the governments, which are successfully addressing their populations' medical needs, are combining direct expenditure with other financing models. In some, government chooses to finance the administrative side of healthcare, leaving specific projects relating to the control of epidemic diseases to external donors, and more and more medical services to the private sector. When funding healthcare, governments also increasingly prefer to pay into health insurance schemes, instead of paying directly for

medical services as in the past. The outlook of healthcare in Africa lies in health insurance and private medical companies, although government and external funding will be important for the foreseeable future.

From Table 7, it is clear that over a period of 10 years, government spending on health in Kenya dropped by around 50 per cent while in Rwanda and Malawi, it more than doubled. For Ghana, it went up by over 50 per cent but dropped by over 30 per cent in Mozambique while it stagnated in Nigeria. success story does, however, also show up one of the limitations of making healthcare free: because no payment is involved and the measure increased the workload for healthcare professionals while making no effective difference to the supply of healthcare, the number of deliveries attended by skilled nurses actually declined from 2005 to 2007.

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External funding

Because of the inadequacy of government programmes to address Africa's health emergencies, the continent has long been a big recipient of external aid in the healthcare sector. This comes in two forms: foreign governments and NGOs. While foreign governments have more funds at their disposal, the strings attached to their assistance are sometimes onerous, and NGOs' relative independence (especially from large pharmaceutical corporations) can make them more effective.

One big problem with NGOs is their propensity to adopt a vertical focus on an issue like malaria or HIV/Aids, to the neglect of potentially more effective efforts in primary healthcare, for example. Ethiopia's success in delivering better healthcare is credited to its willingness to negotiate determinedly with donors¹¹⁷: Minister Tedros Ghebreyesus found ways to channel funds earmarked for HIV/Aids, tuberculosis and malaria to systems that treated many other problems as well.

Africa has, therefore, registered mixed results from relying on external funds to finance health programmes. The standard locus, however, is that those countries that reduce spending on health such as Kenya, Malawi and Mozambique (as shown in the Table 7) become more dependent on external funding for health. Rwanda and Nigeria became less dependent although, anomalously, this did not mean increased funding from domestic sources.

Table 7: Government and External Health Financing

Country	General government expenditure of the total budget		External resources for health as a % of total expenditure	
	2010	2000	2010	2000
Cameroon	8.5%	5.5%	---	---
Ghana	12.1%	8.3%	16.5%	14.5%
Kenya	5.9%	10.5%	37.9%	8.0%
Nigeria	5.7%	4.2%	8.7%	16.2%
Mozambique	10.4%	17.4%	62.2%	25.3%
Rwanda	23.3%	8.2%	48.0%	52.0%
Senegal	12.1%	8.5%	18.4%	17.4%
South Africa	12.4%	10.9%	2.2%	0.3%

(Source: SOTU National Reports)

Rwanda's government has been good at overcoming very low per capita health expenditure (although the health budget as a proportion of the total budget is the highest in Africa) to deliver acceptable outcomes by combining different modes of financing; by successfully lobbying for external funding; and by making the quality of government health bureaucracy a priority. Ghana's success in addressing healthcare issues is only now becoming apparent, as the country's National Health Insurance Scheme (NHIS) initiated in 2003 begins to bear fruit. The proportion of out-of-pocket spending in total private healthcare expenditure is on the decline, with salutary consequences for the poorest Ghanaians.

HIV/Aids

The 2012 Reproductive and Sexual Health Scorecard highlighting adolescent health; protection of girl child/child marriage, HIV, maternal mortality and education also gave a grim picture about HIV prevalence in spite of the Abuja Call.

Access to preventive services

The 2013 Multiple Indicator Africa Scorecard on Girls and Women's Reproductive Health, Family Planning and Human Development Underlining Linkages between Contraceptive Prevalence, Total Fertility per Women has produced figures which indicate that access to preventive services is still a challenge in the countries in this study.

Table 8: Reproductive and Sexual Health Scorecard

Country	Number of women living with HIV/Aids		Percentage of HIV/Aids related maternal deaths Population with HIV 5% prevalence
	Percentage ¹	Actual Number	
Cameroon	50%	520,000	10.1%
Ghana	56%	140,000	Not known
Kenya	63%	760,000	20.2%
Malawi	59%	470,000	29%
Mozambique	---	760,000	26%
Nigeria	47%	1,700,000	Not known
Rwanda	63%	88,000	35%
Senegal	59%	32,000	Not known
South Africa	62%	3,300,000	59%

Table 9: HIV/Aids Multiple Indicator Scorecard

Country	Percentage of girls & women 15-49 married or cohabiting not using condoms
Cameroon	77%
Ghana	66%
Kenya	54%
Malawi	54%
Mozambique	88%
Rwanda	48%
Senegal	87%
South Africa	40%

(Source: Africa Public Health Info and Africa Civil Society Coalition, 2012 Africa Reproductive and Sexual Health Scorecard)

The figures in Table 9 are quite high. They reflect multiple problems related to access to preventive services, the capacity of women to negotiate their sexuality, the unwillingness of men to accept to use condoms with their spouses and fear on the part of women that if they insist on condom use they may either be perceived to be promiscuous or lose their partners.

Link between access to services and food and nutrition

Good nutrition and a balanced diet are essential for managing HIV, tuberculosis, malaria and other diseases. Sexual and reproductive health and rights involve the right to food and nutrition. However, the number and proportion of malnourished people in the case study countries remains significantly high. This is an indicator towards required extra efforts in those countries to implement CAADP and health policy frameworks.

Table 10 shows the state of undernourishment in various countries.

Table 10: Multisectoral Population, Governance, Poverty and Development

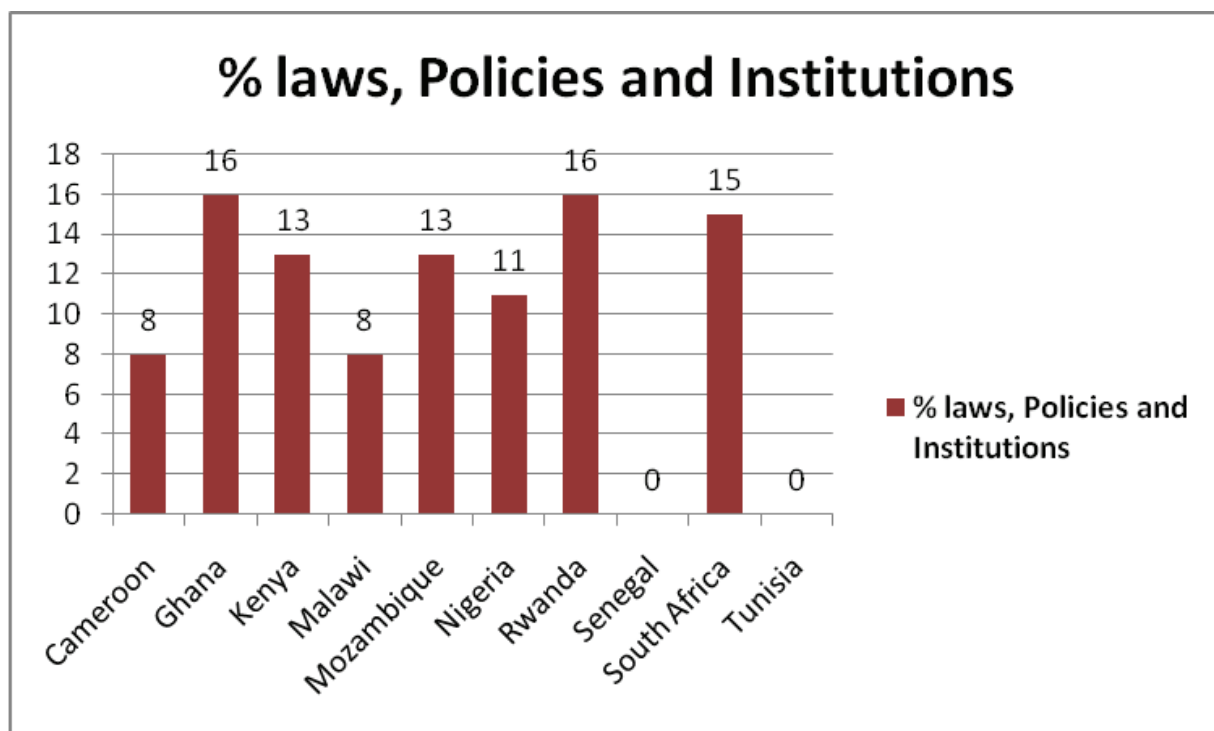
Country	Under 5 mortality per 1000 live births	Annual Number of under 5 deaths	Percentage of under 5 suffering from malnutrition	Percentage of routine expanded programme on immunisation vaccines financed by government
Nigeria	141	861,000	41%	68%
Mozambique	135	114,000	44%	24%
Rwanda	91	438,000	44%	46%
Kenya	85	122,000	41%	48%
Senegal	75	34,000	31%	100%
South Africa	57	58,000	23%	100%
Ghana	74	57,000	87%	Not Available
Malawi	92	56,000	44%	36%
Cameroon	---	---	---	---

(Source: Afri-Dev.Info, 2014, Pre-2015 Multisectoral – Population, Governance, Poverty & Development Scorecard)

Although countries with big populations such as Nigeria have a low percentage, 7 per cent of over 100 million people is still a significant number. There is therefore need to assess government efforts in these countries to implement the Maputo Plan of Action and the Abuja Call for Access to HIV, tuberculosis and malaria

Compliance with the African Union Health Policies by country

Figure 13: Percentage of Laws, Policies and Institutions Established to Ensure Sexual and Reproductive Health and Rights



Low	No. of laws, policies and institutions established to ensure sexual and reproductive health and rights						High
Cameroon	Malawi	Nigeria	Kenya	Mozambique	S. Africa	Ghana	Rwanda



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Chapter 7:

Conclusion and Policy Recommendations

The African Union has formulated treaties and policies that provide the framework for implementing international conventions and advancing Africa's development agenda. In fact, the AU has been praised world over for formulating comprehensive legal instruments and policy frameworks that speak to the very aspirations of the African citizen. As such, they would have tremendous impact on the lives of Africans if their provisions are fully implemented by AU member states and governments. But the enthusiasm with which the Heads of State and Government sign and ratify these instruments does not match performance at the national level. On the whole, implementation is still very low.

Major areas of slow progress are in the Charter on Democracy and Elections, the Protocol to the African Charter of Human and Peoples' Rights on the Rights of Women, the Convention on the Rights and Welfare of the Child, and the Maputo Plan of Action. Indeed, there is need for fresh thinking on how to strengthen democracy and women and children's rights. There still remains a glaring gap between universal values and the negative cultural practices in these three areas around the continent: The acceptance of child marriages across the board in the countries is clear testimony to this.

Prevailing misunderstandings about the nature and objectives of CAADP are worth clarifying, and reversing. Some actors in government, including senior policymakers in most countries, still view CAADP as a programme under which they could raise funds instead of looking at it as a policy framework for guiding their action and interventions. As a result, some of the policies for investment in agriculture have been designed to attract aid rather than agricultural investments. The involvement of the private sector in the implementation of CAADP remains low in general and inter-ministerial networking is weak. As long as Africa's development programmes are predicated on attracting aid rather than internal and external investors, not much progress will be made in utilising CAADP as a platform for agriculture-led development.

The AU has formulated many policies which, if fully implemented, can lift the continent out of conflict, poverty, ignorance and disease. While there is need for more policies and treaties, it may be helpful to seek the implementation of those already in place before producing new ones.

General factors inhibiting implementation

On the whole, some of the factors that inhibit implementation of AU legal instruments and policy frameworks include:

1. Limited levels of popular participation.
2. Shrinking space for CSOs – they speak but their voices do not translate to policy.
3. Unclear responsibilities between parliaments and the executive in some countries. Where Cabinet ministers are at the same time Members of Parliament, the legislature cannot push the executive to effectively take action.
4. Lack of verifiable reliable statistics and information for policy formulation, learning and implementation.
5. Limited capacity for data and information processing especially at local level.
6. Low capacity for formulation and drafting of policy into laws.
7. Low capacity for monitoring and evaluating policies. It is, thus, not easy to

establish whether policies are working or not.

8. Most societies are patriarchal and women representation in decision making is still low and gender inequality persists.

Policy recommendations

In order to strengthen and hasten compliance with AU instruments, the following policy actions and strategies need to be considered and given attention:

1. AU member states should **establish stable and consultative mechanisms for monitoring compliance to AU instruments**. There have been mechanisms in place before, some interstate – e.g. Africa Peer Review Mechanism (APRM) - while a majority are civil society-led. The latter, while well designed, have not yielded the expected results, partly because they are not state-led and as such their structures are not owned by respective governments. One way would be to assess existing state-led monitoring mechanisms of best practice both within and outside the AU and Africa in order to establish their contribution to evidence-based policy making; analyse their applicability in monitoring compliance, and from the lessons develop new mechanisms that will be effective in tracking compliance with the requirements of AU instruments.
2. There is also a need for **improved policy coordination among government arms and agencies** that are charged with implementing policies formulated at the AU. The executive could, for instance, play a more proactive role in clarifying key concepts before forwarding Bills to the legislature for their domestication into national law.
3. The AU and its member states should encourage citizens' opinions on the state of governance in their respective countries and communities. They should do so by **investing in the popularisation of AU instruments** among the African citizenry. This should be a multi-stakeholder task shared between the government, private sector, and the civil society (including the media). The institutional framework for implementation should have a civic education component that educates the public on the content and benefits of complying with the signed instruments.
4. The AU, member states, CSOs, private sector, and other stakeholders should also **invest in research and develop a broad consensus on the key components and indicators** of good governance in a consultative manner.
5. AU member states should commit to **increase the autonomy of electoral commissions** and give them resources, security and accessibility of opposition parties.
6. Establishing quality institutional frameworks at the national level for realising policy objectives of AU instruments is important. But this is not sufficient: **Institutions need to be empowered (have 'teeth') to design, formulate, and implement policies** that fulfil these objectives. This empowerment should include the ability to sanction or prosecute actions that contravene set policy courses. Governments should also complement the existing institutions with laws that are not open to self-serving interpretations and collusion, but laws that are elaborate, stable, and backed by the national constitutions. The stronger the anti-corruption laws and institutions, for instance, the lower the levels of corruption.

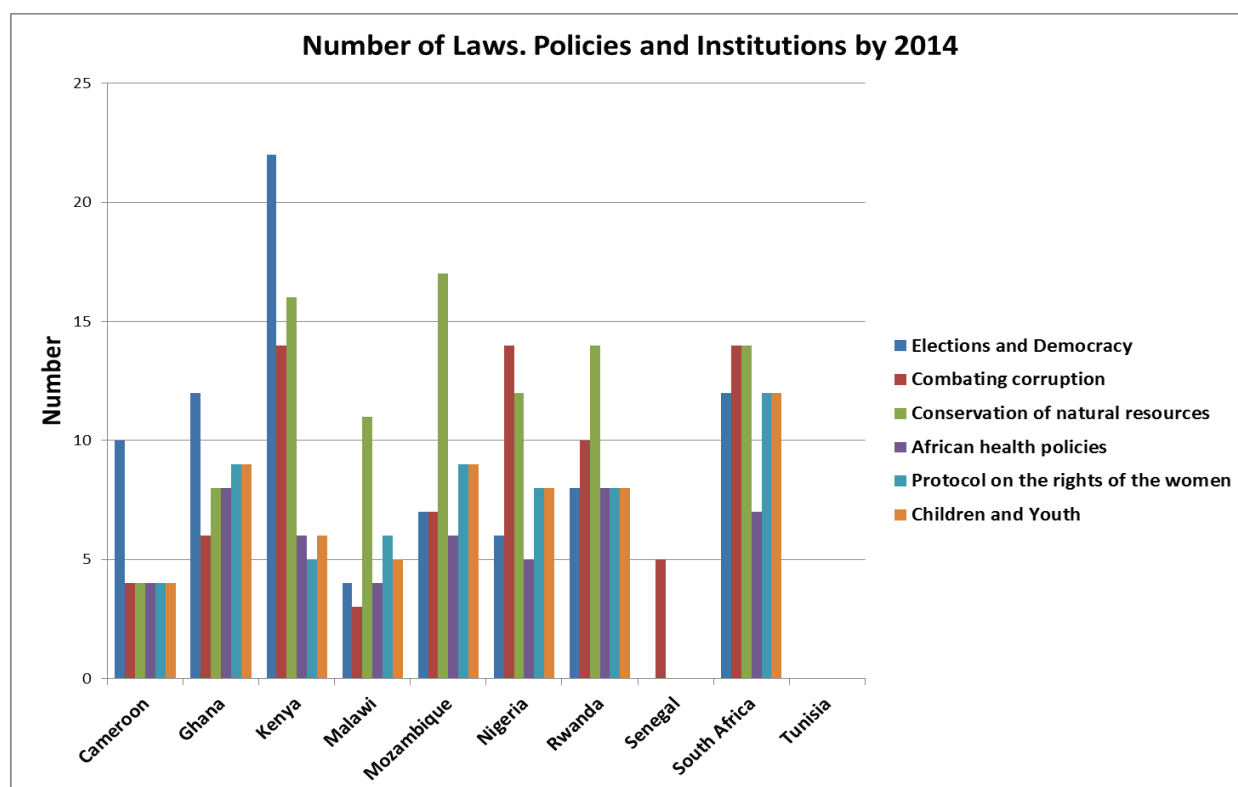
7. Governments should incorporate AU instruments obligations into their constitutions, backed by - and not contrary to or separate from ' - independent national legislation. **National law should be seamlessly applied in relation to the already ratified AU instruments.** A country's extradition laws should, for instance, allow extradition for offences of universal jurisdiction under international treaties and conventions (e.g. AU Convention on the Fight Against Corruption) ratified by that country.
8. Countries **need to develop supreme universal laws that ensure consistency in the application of Laws.** Currently, the Cameroonian Constitution, for instance, affirms the right of women to dignified treatment and protection of their integrity. However, there is no provision in the Penal Code for protection against sexual harassment. Malawi's Penal Code makes it an offence to have carnal knowledge of a woman below the age of 16; yet the Constitution allows marriage of girls aged 15 if the parents give their consent. Such a permissive legal environment creates exit routes for offenders and perpetuates the violation of women and children's rights, hence impeding implementation of related instruments - especially the Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women.
9. **Enact laws that will ensure women empowerment and inclusive political participation and representation** in order to address conflicts and crises, as well as ensure democracy. Policy and legal commitments are required. Further, resources should be mobilised to strengthen the gender equality and inclusion
10. In order to better realise agriculture-led development, policy makers should first view instruments like **CAADP as policy frameworks for guiding their actions and interventions, and not schemes for attracting donor funds.** Policies for investing in agricultural development should be designed to facilitate long-term investments in food security and agriculture-led development rather than to attract foreign funds, as is currently the case in most AU member states. Governments should also consider investing in **components and indicators** of good governance in a consultative manner.
11. AU member states should **harness innovation, which has the potential to increase skill formation, enhance productivity, and create youth employment opportunities.** They should also build institutional quality so that individuals and organisations are effective in responding to the needs of the youth.
12. While the future of healthcare in Africa lies in health insurance and to some extent private medical entities, governments should not neglect their responsibility in financing healthcare. Governments should **scrap or greatly minimise user fees to facilitate access to affordable healthcare services. There is also a need for governments to combine direct expenditure with other healthcare financing models.** They may finance the administrative side of healthcare, leaving specific projects relating to the control of epidemic diseases to external donors, and medical services to the private sector. They may also finance health by paying into health insurance schemes instead of paying directly for medical services.

Table 11: Number of Laws, Policies and Institutions Established to Implement AU Instruments

Country	Elections & Democracy	Combating corruption	Conservation of natural resources	African health policies	Protocol on the rights of women	Rights of Children & youth	Total
Cameroon	10	4	4	4	4	4	30
Ghana	12	6	8	8	9	9	52
Kenya	22	14	16	6	5	6	69
Malawi	4	3	11	4	6	5	33
Mozambique	7	7	17	6	9	9	55
Nigeria	6	14	12	5	8	8	53
Rwanda	8	10	14	8	8	8	56
Senegal	NA	5	NA	NA	NA	NA	5
South Africa	12	14	14	7	12	12	71
Tunisia	NA	NA	NA	NA	NA	NA	NA
Total	81	77	96	48	61	61	

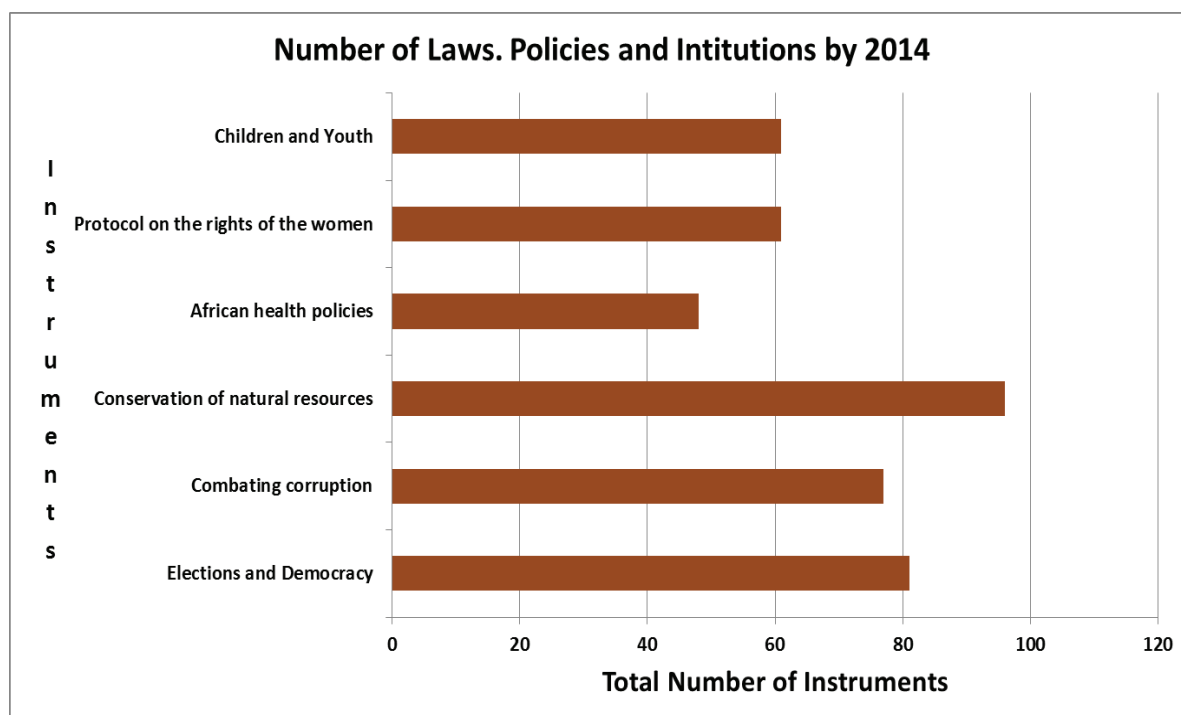
Source: National reports of SOTU 2013/2014

Figure 14: Number of Laws, Policies and Institutions Established to Implement AU Instruments by Country



Source: National reports of SOTU 2013/2014

Figure 15: Number of Laws, Policies and Institutions Established in the Implementation of AU Instruments



Source: National reports of SOTU 2013/2014